GREATER EUROPEAN GOVERNMENTS

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GREATER EUROPEAN GOVERNMENTS

BY

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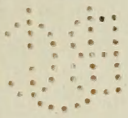

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PREFACE TO THE FIRST EDITION

To take a second exposure on a photographic plate, in order to make the picture more accurate, is apt to have the opposite effect. Attempting to bring a description of social conditions or political institutions up to date is more often undertaken, but hardly with greater success; and when it is done in a hurry the defects are increased. Yet the demand for a book dealing in a moderate compass with the governments of the principal belligerents in Europe came so suddenly that it could be met only by using existing material with such few additions and corrections as seemed of primary importance. This volume is an abridgment of the author's "Government of England" which was published ten years ago, and of his "Governments and Parties in Continental Europe" published more than twenty years ago. Until this war the general traits of the political systems therein portrayed had altered little; and although some changes that have occurred since the war have been incorporated, there has been no attempt to cover the conditions brought about by the war. The object has been to show how those governments operate normally in time of peace, not how they have adjusted themselves to intense military stress.

While it is believed that all important alterations that have taken place in the governments of the countries described since the original publication have been referred to in the notes or embodied in the text, doubtless some minor ones have been passed unheeded; and the lack of time has prevented a revision and carrying down to the present day

of the authorities cited in the notes. The purpose of the book is to serve an immediate end: that of giving to the members of the War Aims Course in the Students' Army Training Corps, and to the many people in this country who take for the first time an interest in foreign nations, a picture of the principal governmental systems in Europe.

The writer desires to thank the Macmillan Company for the permission to use extracts from the "Government of England"; and Dean Henry A. Yeomans of Harvard College for revising the chapters on France and Italy.

CAMBRIDGE, MASSACHUSETTS
November 5, 1918

PREFACE TO THE REVISED EDITION
1925

THIS little book, an abridgment of the author's "Government of England" and "Governments and Parties in Continental Europe," was first issued in 1918 to meet a sudden demand for a brief description of the political institutions in the larger European nations engaged in the war, especially for use in the War Aims Course of the Students' Army Training Corps. As there seems to be still a demand for a book of this compass dealing with those governments, this new edition has been prepared with the help of Assistant Professor Raymond L. Buell, whose studies of contemporary governments and politics have made him a master of these subjects. From his wide knowledge he has supplied the statements of changes and new conditions that have come since the war.

While the war was raging, and every belligerent was putting forth its utmost efforts in military force, the gov-

ernments were necessarily far more autocratic than in normal times; and after peace was restored some of them were profoundly altered, while others reverted to their former political traditions. This last has been the case in England and France where, save for the changes hereinafter noted, the general nature and working of the governments are much the same that they were before the war. In Germany, on the other hand, there has been a revolution in favor of a republic; and in Italy a counter-revolution in favor of an autocracy; changing in Germany the form, and in both countries the character, of the government. Yet in both cases it is impossible to grasp the real nature of the present institutions and conditions without some knowledge of those which preceded, for on them the existing ones are based. A general outline of the old order in these two nations has, therefore, been retained, followed by a description of the new.

One of the governments included in the earlier edition of this book, that of the dual monarchy in Austria-Hungary, has disappeared as a result of the war. In its place that of Switzerland has been substituted; not that the country is great in size, but because its government is among those having the greatest interest for the people of the United States.

The author desires to renew his thanks to the Macmillan Company for the permission to use excerpts from the "Government of England."

CAMBRIDGE, MASSACHUSETTS
August 6, 1925

CONTENTS

CHAPTER I

ENGLAND: CROWN AND CABINET

CHAPTER II

ENGLAND: PARLIAMENT

CHAPTER III

ENGLAND: PARTY

CHAPTER IV

ENGLAND: LOCAL GOVERNMENT

CHAPTER V

ENGLAND: THE EMPIRE

CHAPTER VI

FRANCE: INSTITUTIONS

CHAPTER VII

FRANCE: PARTIES

CHAPTER VIII

ITALY

CHAPTER IX

GERMANY: STRUCTURE OF THE EMPIRE

CHAPTER X

THE NEW GERMAN CONSTITUTION

CHAPTER XI

SWITZERLAND

GREATER EUROPEAN GOVERNMENTS

CHAPTER I

ENGLAND: CROWN AND CABINET

Sources of the English Constitution

THE English constitution — speaking, of course, of its form, not its content — differs from those of most other European nations more widely in method of expression than in essential nature and legal effect. They have been created usually as a result of a movement to change fundamentally the political institutions of the country, and the new plan has naturally been embodied in a document; but since the Restoration England has never revised her frame of government as a whole, and hence has felt no need of codifying it. The national political institutions are to be found in statutes,[1] in customs which are enforced and developed by the courts and form a part of the common law, and in customs strictly so called which have no legal validity whatever and cannot be enforced at law. These last are very appropriately called by Professor Dicey the conventions of the constitution. The two chief peculiarities of the English constitution are: first, that no laws are ear-marked as constitutional — all laws can be changed by Parliament, and hence it is futile to attempt to draw a sharp line between those laws which do and those which do not form a part of the constitution; second, the large part played by customary rules, which are carefully followed, but which are entirely devoid of legal sanction. Customs or conventions

[1] Boutmy in his *Études de droit constitutionnel* (1st ed., p. 9) adds treaties or quasi-treaties (the Acts of Union), and solemn agreements such as the Bill of Rights. But all these are in legal effect simply statutes.

of this kind exist, and in the nature of things must to some extent exist, under all governments. In the United States where they might, perhaps, be least expected, they have transformed the presidential electors into a mere machine for registering the popular vote in the several states, and this is only the most striking of the instances that might be cited.[1] England is peculiar, not because it has such conventions, but because they are more abundant and all-pervasive than elsewhere. The most familiar of them is, of course, the rule that the king must act on the advice of his ministers, while they must resign or dissolve Parliament when they lose the confidence of the majority in the House of Commons. It is impossible, however, to make a precise list of the conventions of the constitution, for they are constantly changing by a natural process of growth and decay; and while some of them are universally accepted, others are in a state of uncertainty.

The Relation of Law and Custom

The relation between law and custom in the English government is characteristic. From the very fact that the law consists of those rules which are enforced by the courts, it follows that the law — including, of course, both the statutes and the common law — is perfectly distinct from the conventions of the constitution; is quite independent of them, and is rigidly enforced. The conventions do not abrogate or obliterate legal rights and privileges, but merely determine how they shall be exercised. The legal forms are scrupulously observed, and are as requisite for the validity of an act as if custom had not affected their use. The power of the crown, for example, to refuse its consent to bills passed by the two houses of Parliament is obsolete,

[1] Bryce, *American Commonwealth*, ch. xxxiv.

yet the right remains legally unimpaired. The royal assent is given to such bills with as much solemnity as if it were still discretionary, and without that formality a statute would have no validity whatever. The most notable example of this is the way in which the actual exercise of the royal power has been transferred from the king to Parliament. The House of Commons gradually drew his authority under its control; but it did so without seriously curtailing the legal powers of the crown, and thus the king legally enjoys most of the attributes that belonged to his predecessors, although the exercise of his functions has passed into other hands. If the personal authority of the monarch has become a shadow of its former massiveness, the government is still conducted in his name, and largely by means of the legal rights attached to his office. With a study of the crown, therefore, a description of English government most fittingly begins.

Powers of the Crown

The authority of the English monarch may be considered from different points of view, which must be taken up in succession; the first question being what power is legally vested in the crown; the second, how much of that power can practically be exercised at all; the third, how far the power of the crown actually is, or may be, used in accordance with the personal wishes of the king, and how far its exercise is really directed by his ministers; the fourth, how far their action is in turn controlled by Parliament.

Legislative Power

All legislative power is vested in the King in Parliament; that is, in the king acting in concert with the two houses. Legally, every act requires the royal assent, and, indeed, the houses can transact business only during the pleasure of the

crown, which summons and prorogues them, and can at any moment dissolve the House of Commons. But it is important to note that by itself, and apart from Parliament, the crown has to-day, within the United Kingdom, no inherent legislative power whatever. This was not always true, for legislation has at times been enacted by the crown alone in the form of ordinances or proclamations; but the practice may be said to have received its death-blow from the famous opinion of Lord Coke, "that the King by his proclamation cannot create any offence which was not an offence before, for then he may alter the law of the land." [1] The English crown has, therefore, no inherent power to make ordinances for completing the laws, such as is possessed by the chief magistrate in France and other continental states. This does not mean that it cannot make regulations for the conduct of affairs by its own servants, by Orders in Council, for example, establishing regulations for the management of the army, or prescribing examinations for entrance to the civil service. These are merely rules such as any private employer might make in his own business, and differ entirely in their nature from ordinances which have the force of law, and are binding quite apart from any contract of employment.

Power to make ordinances which have the force of law and are binding on the whole community is, however, frequently given to the crown [2] by statute, notably in matters affecting public health, education, etc., and the practice is constantly becoming more and more extensive, until at present the rules made in pursuance of such powers — known as "statutory orders" — are published every year in a volume similar in form to that containing the statutes.

[1] Coke's Reports, xii. 76.

[2] Or more strictly to the Crown in Council.

Some of these orders must be submitted to Parliament, but go into effect unless within a certain time an address to the contrary is passed by one of the houses; while others take effect at once, or after a fixed period, and are laid upon the tables of the houses in order to give formal notice of their adoption.[1]

At the outbreak of the late War, the Defense of the Realm Act was passed, which authorized the King in Council to make regulations during the war to secure public safety and the defense of the realm.[2] Under this authority, regulations were issued authorizing the military authorities to occupy private lands, to take over the output of factories, and require individuals to extinguish lights and to remain indoors when ordered to do so. Violations of these orders could be punished in serious cases by courts-martial, which, if the defendant was assisting the enemy, could even sentence to death. Less serious violations were tried by courts of summary jurisdiction. In 1920, the Emergency Powers Act was passed authorizing the Crown to proclaim an emergency whenever a strike, etc., threatened to curtail the supply of necessities to the community, and thereupon, by Order in Council, to issue regulations for securing the essentials of life. It provided further that persons violating these regulations might be tried by courts of summary jurisdiction.[3] Under this law, the Government could suspend the legal remedies against the police and other safeguards against arbitrary action.[4] Both the De-

[1] Cecil T. Carr, *Delegated Legislation*.

[2] 4–5 Geo. V, c. 29; 5–6 Geo. V, c. 8. For the regulations, cf. *Statutory Rules and Orders*, 1914, i. 508–526.

[3] 10–11 Geo. V, c. 55; for regulations issued under it, cf. *Statutory Rules and Orders*, 1921, note to p. 226.

[4] For comment, cf. Willoughby and Rogers, *Introduction to the Problem of Government*, p. 99.

fense of the Realm Act and the Emergency Powers Act vested in the Crown such a sweeping grant of power that it was difficult for the courts to prevent its being unjustly used in individual cases. Yet the essential principle of the Rule of Law remains, a fact brought out in proceedings against the Home Secretary in May, 1923, for handing O'Brien over to the Irish Free State on the charge of conspiring against its government. This action, O'Brien alleged, was taken without legal authority, and he obtained a judgment for damages against the Home Secretary for illegal arrest.[1] Parliament subsequently passed an act of indemnity, but the case shows that the authority of the Crown in England is strictly limited by law enforced by the courts.

Executive Power

The crown is at the head of the executive branch of the central government, and carries out the laws, so far as their execution requires the intervention of any national public authority. In fact all national executive power, whether regulated by statute, or forming strictly a part of the prerogative, that is, of the ancient inherent royal authority, is exercised in the name of the crown, and by its authority, except when directly conferred by statute upon some officer of the crown, and in this case, as we shall see, it is exercised by that officer as a servant of the crown, and under its direction and control. Legally some of the executive powers are indeed vested in the Crown in Council,—that is, in the king acting with his Privy Council,—but as the Council has no independent authority, and consists, for practical purposes, of the principal ministers appointed by the crown, even these powers may be said to reside in the crown alone.

[1] Ex parte O'Brien, 39 *The Times Law Reports*, 487.

All national public officers, except some of the officials of the houses of Parliament, and a few hereditary dignitaries whose duties are purely ceremonial,[1] are appointed directly by the crown or by the high state officials whom it has itself appointed; and the crown has also the right to remove them, barring a small number whose tenure is during good behavior. Of these last by far the most important are the judges, the members of the Council of India, and the Controller and Auditor General, no one of whom has any direct part in the executive government of the kingdom.[2] Now the right to appoint and remove involves the power to control; and, therefore, it may be said in general that the whole executive machinery of the central government of England is under the direction of the crown.

The crown furthermore authorizes under the sign manual the expenditure of public money in accordance with the appropriations made by Parliament, and then expends the money. It can grant charters of incorporation, with powers not inconsistent with the law of the land, so far as the right to do so has not been limited by statute. The crown grants all pardons, creates all peers, and confers all titles and honors. As head of the Established Church of England it summons Convocation with a license to transact business specified in advance. It virtually appoints the archbishops, bishops and most of the deans and canons, and has in its gift many rectorships and other livings. As head of the army and navy it raises and controls the armed forces of the nation, and makes regulations for their government,

[1] Such as the hereditary Earl Marshal and Grand Falconer.

[2] On the power of removal from an office held during good behavior, and on the effect of the provision that the three classes of officers mentioned above may be removed upon the address of both houses of Parliament, see Anson, *Law and Custom of the Constitution*, ii. 213–215. The references to Anson are to the 3d ed. of vol. i. (1897); the 2d ed. of vol. ii. (1896).

subject, of course, to the statutes and to the passage of the Annual Army Act. It represents the empire in all external relations, and in all dealings with foreign powers. It has power to declare war, make peace, and conclude treaties, save that, without the sanction of Parliament, a treaty cannot impose a charge upon the people, or change the law of the land, and it is doubtful how far without that sanction private rights can be sacrificed or territory ceded.[1]

Just as Parliament has often conferred legislative authority upon the crown, so it has conferred executive power in addition to that possessed by virtue of the prerogative. Statutes of this kind have become very common during the last half century in relation to such matters as local government, public health, pauperism, housing of the working-classes, education, tramways, electric lighting and a host of other things. Even without an express grant of authority, supervisory powers have often been conferred upon the crown by means of appropriations for local purposes which can be applied by the government at its discretion, and hence in accordance with such regulations as it chooses to prescribe. This has been true, for example, of the subsidies

[1] Cf. Anson, *Law and Custom*, ii. 297–299; Dicey, *Law of the Constitution*, p. 393. Heligoland was ceded to Germany by treaty in 1890, subject to the assent of Parliament, which was given by 53–54 Vic., c. 32. In April, 1924, the MacDonald government informed the House of Commons that "in order to strengthen the control of Parliament over international treaties," the Government would lay on the table in both Houses every treaty, when signed, for a period of twenty-one days, after which the treaty would be ratified and published, but in the event of important treaties an opportunity for discussion would be given within this period. H. of C. Debates, April 2, 1924. Thus, if Parliament disapproved of a treaty, it could prevent its ratification by expressing disapproval of its terms. This was discontinued by the Conservative government which came into power as a result of the next election.

in aid of the local police, and of education. By such methods the local authorities, and especially the smaller ones, have been brought under the tutelage of the crown to an extent quite unknown in the past.

Wide Extent of the Royal Power

All told, the executive authority of the crown is, in the eye of the law, very wide. "It would very much surprise people," as Bagehot remarked in his incisive way, "if they were only told how many things the Queen could do without consulting Parliament. . . . Not to mention other things, she could disband the army (by law she cannot engage more than a certain number of men, but she is not obliged to engage any men); she could dismiss all the officers, from the General Commanding-in-Chief downwards; she could dismiss all the sailors too; she could sell off all our ships of war and all our naval stores; she could make a peace by the sacrifice of Cornwall, and begin a war for the conquest of Brittany. She could make every citizen in the United Kingdom, male or female, a peer; she could make every parish in the United Kingdom a 'university'; she could dismiss most of the civil servants; she could pardon all offenders. In a word, the Queen could by prerogative upset all the action of civil government within the government."[1] We might add that the crown could appoint bishops, and in many places clergymen, whose doctrines were repulsive to their flocks; could cause every dog to be muzzled, every pauper to eat leeks, every child in the public elementary schools to study Welsh; and could make all local improvements, such as tramways and electric light, well-nigh impossible.

[1] *English Constitution*, 2d ed. (Amer.), Introd., p. 31.

Powers of the Crown exercised by Ministers

Since the accession of the House of Hanover the new powers conferred upon the crown by statute have probably more than made up for the loss to the prerogative of powers which have either been restricted by the same process or become obsolete by disuse. By far the greater part of the prerogative, as it existed at that time, has remained legally vested in the crown, and can be exercised to-day; but it is no longer used in accordance with the personal wishes of the sovereign. By a gradual process his authority has come more and more under the control of his ministers, until it is now almost entirely in the hands of the cabinet, which is responsible to Parliament and through Parliament to the nation. The cabinet is to-day the mainspring of the whole political system, and the clearest method of explaining the relations of the different branches of the government to each other is to describe in succession their relations with the cabinet.

The King can do no Wrong

The doctrine that " the King can do no wrong " had its beginnings as far back as the infancy of Henry III, and by degrees it grew until it became a cardinal principle of the constitution. Legally it means that he cannot be adjudged guilty of wrong-doing, and hence that no proceedings can be brought against him. He cannot be prosecuted criminally, or, without his own consent, sued civilly in tort or in contract in any court in the land.[1] But clearly, if the government is to be one of law, if public officers like private

[1] If a person has a claim against the crown for breach of contract, or because his property is in its possession, he may bring a Petition of Right, and the crown on the advice of the Home Secretary will order the petition indorsed " Let right be done," when the case proceeds like an ordinary suit.

citizens are to be subject to the courts, if the people are to be protected from arbitrary power, the servant who acts on behalf of the crown must be held responsible for illegal conduct from the consequences of which the king himself is free. Hence the principle arose that the king's command is no excuse for a wrongful act, and this is a firmly established maxim of the Common Law in both civil and criminal proceedings.[1] To prevent royal violations of the law, however, it is not enough to hold liable a servant who executes unlawful orders, if the master still has power to commit offenses directly. A further step must be taken by restraining the crown from acting without the mediation of a servant who can be made accountable; and for this reason Edward IV was informed that he could not make an arrest in person.[2] But, as the kings and queens are not likely to be tempted into personal assaults and trespasses, the principle that they can act only through agents has had little importance from the point of view of their liability at law, although it is a matter of vital consequence in relation to their political responsibility.

[1] Anson, ii. 4, 5, 42, 43, 278, 279, 476–480. But a servant of the crown is not liable on its contracts, for he has made no contract personally, and he cannot be compelled to carry out the contracts of the crown. Gidley *v.* Lord Palmerston, 3 B. & B., 284. The rule that the sovereign cannot be sued has been held to prevent a possessory action against a person wrongfully in the possession of land as agent of the crown: Doe d. Legh. *v.* Roe, 8 M. & W., 579. It would seem that in such a case the courts might have held that as the king could do no wrong, the wrongful act, and consequently the possession, was not his; in other words, that the agency could not be set up as a defense to the wrongful act. Compare United States *v.* Lee, 106 U. S., 196, where land was held to have been illegally seized by the government of the United States.

[2] Coke, *Inst.* (4th ed.), ii. 186–187. "Hussey Chief Justice reported, that Sir John Markham said to King E. I. that the King could not arrest any man for suspition of Treason, or Felony, as any of his Subjects might, because if the King did wrong, the party could not have his Action." E. I. is a mistake for E. IV.

The doctrine that the king can do no wrong applies not only to legal offenses, but also to political errors. The principle developed slowly, as a part of the long movement that has brought the royal authority under the control of public opinion; not that the process was altogether conscious, or the steps deliberately planned, but taking constitutional history as a whole, we can see that it tended to a result, and in speaking of this it is natural to use terms implying an intent which the actors did not really possess. To keep the crown from actual violations of law was not always easy, but it was far more difficult to prevent it from using its undoubted prerogatives to carry out an unpopular policy. Parliament could do something in a fitful and intermittent way by refusing supplies or insisting upon the redress of particular grievances, but that alone was not enough to secure harmony between the crown and the other political forces of the day. There could, in the nature of things, be no appropriate penalty for royal misgovernment. In the Middle Ages, indeed, a bad king or a weak king might lose his throne or even his life; but in more settled times such things could not take place without a violent convulsion of the whole realm — a truth only too well illustrated by the events of the seventeenth century. An orderly government cannot be founded on the basis of personal rule tempered by revolution. Either the royal power must be exercised at the personal will of the monarch, or else other persons who can be made accountable must take part in his acts of state.

The Nature of Modern Responsibility

The effort to fasten upon a particular person the actual responsibility for each public act of the crown by compelling some officer to put his approval of it on record, has

been superseded by the general principle that the responsibility must always be imputed to a minister. Although ignorant of the matter at the time it occurred, he becomes answerable if he retains his post after it comes to his knowledge; and even though not in office when the act was done, yet if he is appointed in consequence of it, he assumes with the office the responsibility for the act. This happened to Sir Robert Peel in 1834. Believing, as every one at that time did believe, that the king had arbitrarily dismissed Lord Melbourne's cabinet, he said, "I should by my acceptance of the office of First Minister become *technically, if not morally*, responsible for the dissolution of the preceding government, although I had not the remotest concern in it." [1] The rule is so universal in its operation "that there is not a moment in the king's life, from his accession to his demise, during which there is not some one responsible to Parliament for his public conduct." [2] A minister is now politically responsible for everything that occurs in his department, whether countersignature or seal is affixed by him or not; and all the ministers are jointly responsible for every highly important political act. A minister whose policy is condemned by Parliament is no longer punished, he resigns; and if the affair involves more than his personal conduct or competence, if it is of such moment that it ought to have engaged the attention of the cabinet, his colleagues resign with him. Thus punitive responsibility has been replaced by political responsibility, and separate has been enlarged to joint responsibility.

The King must follow the Advice of Ministers

The ministers, being responsible to Parliament for all the acts of the crown, are obliged to refrain from things that

[1] Mahon and Cardwell, *Memoirs of Sir Robert Peel*, ii. 31.

[2] Todd, *Parl. Government in England*, 2d ed., i. 266.

they cannot justify, and to insist upon actions which they regard as necessary. In short, the cabinet must carry out its own policy; and to that policy the crown must submit. The king may, of course, be able to persuade his ministers to abandon a policy of which he does not approve, but if he cannot persuade them, and, backed by a majority in Parliament, they insist upon their views, he must yield. It is commonly said that he must give his ministers his confidence, but it would be more accurate to say that he must follow their advice. With the progress of the parliamentary system this custom has grown more and more settled, the ministers assuming greater control, and the crown yielding more readily, not necessarily from any dread of the consequences, but from the force of habit.

For What Acts Ministers are Responsible

There is one matter in which the crown cannot really be bound by the advice of ministers, and that is in the selection of a premier. It would be obviously improper, not to say absurd, that the king in the selection of a new prime minister should be obliged to follow the opinion of the one who has just resigned in consequence of a change of party in the House of Commons. There is usually one recognized leader of the Opposition, and when that is the case the crown must entrust the formation of the new ministry to him. This was illustrated in 1880. Mr. Gladstone had, some years before, retired from the leadership of the Liberals in Parliament, and the Queen, after their success at the general election, sent for Lord Hartington, then leading them in the House of Commons; but she found that Mr. Gladstone, who had really led the party in the country to victory, was the only possible head of a Liberal government.[1]

[1] Cf. Morley, *Life of Gladstone*, book ii, ch. vii.

If the party that has obtained a majority in Parliament has no recognized leader, the crown may entrust the formation of a ministry to any one of its chief men who is willing to undertake the task; or if, as is sometimes the case, the parties have become more or less disintegrated, so that only a coalition ministry can be formed, the crown can send for the head of any one of the various groups. Not to speak of earlier days, when the king had more freedom than at present in the formation of his cabinets, it happened several times in the reign of Queen Victoria that the question who should be prime minister was determined by her personal choice. Such opportunities, however, are likely to be less common in future, for it is altogether probable that a party will prefer to choose its own leader rather than to leave the selection to the crown.

At the present day all persons whose offices are considered political are appointed in accordance with the advice of the Prime Minister. This does not mean that the sovereign may not urge his own views, perhaps with success; and on one occasion, at least, the Queen secured, it is said, a place in the cabinet for a former minister whom the incoming premier had either forgotten or meant to leave out. It does mean, however, that if the minister insists upon his advice it must be accepted. In short, the ministers direct the action of the crown in all matters relating to the government. The king's speech on the opening of Parliament is, of course, written by them; and they prepare any answers to addresses that may have a political character. All official letters and reports to the king, and all communications from him, must pass through the hands of one of their number.

Since the king can do no wrong, he can do neither right nor wrong. He must not be praised or blamed for political

acts; nor must his ministers make public the fact that any decision on a matter of state was actually made by him.[1] His name must not be brought into political controversy in any way, or his personal wishes referred to in argument, either within or without Parliament.[2]

Utility of the Monarchy

According to the earlier theory of the constitution the ministers were the counsellors of the king. It was for them to advise and for him to decide. Now the parts are almost reversed and the sovereign is not usually consulted about matters of domestic legislation and policy until the opinion of the cabinet has taken shape. For although he is informed in general terms of what is done at cabinet meetings, and sometimes discusses with a minister the proposed measures relating to his department, yet a matter is commonly talked over and agreed upon by the ministers before it is submitted to him for approval. In this way " the sovereign is brought into contact only with the net results of previous inquiry and deliberation," [3] and the views of the cabinet are " laid before " him " and before Parliament, as if they were the views of one man." [4] To-day the social and ceremonial

[1] Disraeli's opponents were right in criticizing him for letting it be known that it was the Queen who had decided whether to accept his resignation or to dissolve in 1868: Hans. 3d Ser., cxci. 1705, 1724, 1742, 1788, 1794, 1800, 1806, 1811. There was no objection to allowing her to decide if he pleased, — that is, he might accept her opinion as his own, — but he ought to have assumed in public the sole responsibility for the decision.

[2] In 1876 Mr. Lowe in a public speech expressed his belief that the Queen had urged previous ministers in vain to procure for her the title of Empress of India. The matter was brought to the attention of the House of Commons, and he was forced to make an apology, which was somewhat abject, the Queen through the Prime Minister having denied the truth of his statement. Hans. 3d Ser., ccxxviii. 2023 *et seq.;* and ccxxix. 52–53.

[3] Gladstone, *Gleanings of Past Years*, i. 85.

[4] Morley, *Life of Walpole*, p. 155.

functions of the crown attract quite as much interest as ever; but as a political organ it has receded into the background, and occupies public attention far less than it did formerly, while the spread of democracy has made the masses more and more familiar with the actual forces in public life.

On the other hand, the government of England is inconceivable without the parliamentary system, and no one has yet devised a method of working that system without a central figure, powerless, no doubt, but beyond the reach of party strife. Some countries that had no kings have felt constrained to adopt monarchs who might hold a sceptre which they could not wield; and France, disliking kings, has been forced to set up a president with most of the attributes of royalty except the title. If the English crown is no longer the motive power of the ship of state, it is the spar on which the sail is bent, and as such it is not only a useful but an essential part of the vessel.

To many countries the visible symbol of the state is the flag; but curiously enough there is no British national flag. Different banners are used for different purposes; the king uses the Royal Standard; ships of war carry at the peak the White Ensign; naval reserve vessels fly the Blue Ensign, and merchantmen the Red Ensign; while the troops march, and Parliament meets, under the Union Jack; and all of these are freely displayed on occasions of public rejoicing. Each of the self-governing colonies has, moreover, its own flag, which consists of the Union Jack with some distinctive emblem upon it. The crown is thus the only visible symbol of union in the Empire, and this has undoubtedly had no inconsiderable effect upon the reverence felt for the throne.

Whatever the utility of the crown may be at the present

time, there is no doubt of its universal popularity. A generation ago, when the Queen, by her seclusion after the death of Prince Albert, neglected the social functions of the court, a number of people began to have serious doubts on the subject. This was while republican ideals of the earlier type still prevailed, and before men had learned that a republic is essentially a form of government, and not necessarily either better or worse than other forms. The small republican group in England thought the monarchy useless and expensive; but people have now learned that republics are not economical, and that the real cost of maintaining the throne is relatively small.[1] So that, while the benefits derived from the crown may not be estimated more highly, or admitted more universally than they were at that time, the objections to the monarchy have almost entirely disappeared, and there is no republican sentiment left to-day either in Parliament or the country.

Nature of the Cabinet

The conventions of the constitution have limited and adjusted the exercise of all legal powers by the regular organs of the state in such a way as to vest the main authority of the central government — the driving and the steering force — in the hands of a body entirely unknown to the law. The members of the cabinet are almost always the holders of public offices created by law; but their possession of those offices by no means determines their activity as members of the cabinet. They have, indeed, two functions. Individually, as officials, they do the executive work

[1] Hans. 4th Ser., xciv. 1500. The Civil List of Edward VII was fixed at his accession at £543,000, to which must be added about £60,000 of revenues from the Duchy of Lancaster, and also the revenues from the Duchy of Cornwall which go to the heir apparent as Duke of Cornwall. Rep. Com. on Civil List, Com. Papers, 1901, v. 607.

of the state and administer its departments; collectively they direct the general policy of the government.

The essential function of the cabinet is to coördinate and guide the political action of the different branches of the government, and thus create a consistent policy. Bagehot called it a hyphen that joins, a buckle that fastens, the executive and legislative together; and in another place he speaks of it as a committee of Parliament chosen to rule the nation. More strictly, it is a committee of the party that has a majority in the House of Commons. The minority is not represented upon it; and in this it differs from every other parliamentary committee. The distinction is so obvious to us to-day, we are so accustomed to government by party wherever popular institutions prevail, that we are apt to forget the importance of the fact.

The cabinet is selected by the party, not directly, but indirectly, yet for that very reason represents it the better. Direct election is apt to mean strife within the party, resulting in a choice that represents the views of one section as opposed to those of another, or else in a compromise on colorless persons; while the existing indirect selection results practically in taking the men, and all the men, who have forced themselves into the front rank of the party and acquired influence in Parliament. The minority party is not represented in the cabinet; but the whole of the majority is habitually represented, all the more prominent leaders from every section of the party being admitted. In its essence, therefore, the cabinet is an informal but permanent caucus of the parliamentary chiefs of the party in power — and it must be remembered that the chiefs of the party are all in Parliament. In fact the continental practice, whereby ministers are allowed to address the legislature, whether they have seats in it or not, being unknown in England,

every member of the cabinet, and indeed of the ministry, must have a seat in one or other House of Parliament.

The Need of Unity and Secrecy in the Cabinet

Parliamentary government in its present highly developed form requires a very strong cohesion among the members of the majority in the House of Commons, and, therefore, absolute harmony, or the appearance of harmony, among their leaders. Party cohesion, both in the House and in the cabinet, is, indeed, an essential feature of the parliamentary system;[1] but since men, however united on general principles, do not by nature think alike in all things, differences of opinion must constantly arise within the cabinet itself.[2] Sometimes they are pushed so far that they can be settled only by a division or vote; but this is exceptional, for the object of the members is, if possible, to agree, not to obtain a majority of voices and override the rest.[3] The work of every cabinet must, therefore, involve a series of compromises and concessions, the more so because the members represent the varying shades of opinion comprised in the party in power.

Men engaged in a common cause who come together for the purpose of reaching an agreement usually succeed, provided their differences of opinion are not made public. But without secrecy harmony of views is well-nigh unattainable;

[1] This is true in normal times; but early in this war a cabinet of both parties was formed, which for the time suspended the ordinary working of the parliamentary system.

[2] One cannot read Mr. Morley's *Life of Gladstone* without being struck by the frequency of such differences. One feels that in his twenty-five years of life in the cabinet Gladstone must have expended almost as much effort in making his views prevail with his colleagues as in forcing them through Parliament.

[3] In Gladstone's cabinet of 1880–1885 the practice of counting votes was complained of as an innovation. Morley, *Life of Gladstone*, iii. 5.

for if the contradictory opinions held by members of the cabinet were once made public, it would be impossible afterwards to make the concessions necessary to a compromise without the loss of public reputation for consistency and force of character. Moreover, a knowledge of the initial divergence of views among the ministers would vastly increase the difficulty of rallying the whole party in support of the policy finally adopted, and would offer vulnerable points to the attacks of the Opposition. Secrecy is, therefore, an essential part of the parliamentary system. In fact, by a well-recognized custom, it is highly improper to refer in Parliament, or elsewhere, to what has been said or done at meetings of the cabinet, although reticence must at times place certain members in a very uncomfortable position.

The Prime Minister

At the meetings of the cabinet the Prime Minister as chairman is no doubt merely *primus inter pares*. His opinion carries peculiar weight with his colleagues mainly by the force it derives from his character, ability, experience, and reputation; but apart from cabinet meetings he has an authority that is real, though not always the same or easy to define.

Matters of exceptional importance ought to be brought to his attention before they are discussed in the cabinet; and any differences that may arise between any two ministers, or the departments over which they preside, should be submitted to him for decision, subject, of course, to a possible appeal to the cabinet. He is supposed to exercise a general supervision over all the departments. Nothing of moment that relates to the general policy of the government, or that may affect seriously the efficiency of the service, ought to be transacted without his advice.

Unless the Prime Minister is a peer, he represents the cabinet as a whole in the House of Commons, making there any statements of a general nature. The other ministers usually speak only about matters in which they are directly concerned. But the Prime Minister must keep a careful watch on the progress of all government measures; and he is expected to speak not only on all general questions, but on all the most important government bills.

The Cabinet and the Ministry

The ministry is composed of an inner part that formulates the policy of the government, and an outer part that follows the lines laid down; the inner part, or cabinet, containing the more prominent party leaders, who are also holders of the principal offices of state, while the outer part consists of the heads of the less important departments, the parliamentary undersecretaries, the whips and the officers of the royal household. All of these persons are strictly in the ministry, and resign with the cabinet; but the officers of the household have, as such, no political functions, and do not concern us here. By far the greater part of the ministers outside of the cabinet are the parliamentary undersecretaries, who have two distinct sets of duties, one administrative and the other parliamentary. Their administrative duties vary very largely, mainly in accordance with personal considerations. Some of them are really active in their departments, doing work which might fall upon the parliamentary chief, or upon the permanent undersecretary, while others have little or no administrative business; but in any case the real object of their existence is to be found on the parliamentary side.

The Effect of the War

The World War brought for the time a number of radical changes in the British system of cabinet government, the most striking being the temporary abandonment of party government by admitting the Conservative leaders to a coalition ministry in May, 1915. Moreover, a large number of new ministries were created, such as those of munitions, blockade, and reconstruction, until the total membership of the ministry was increased to ninety-three. Many of the new ministries disappeared at the end of the war; but some of them, such as those of Labor, Transport, and Pensions, have been permanently retained. Moreover, in 1919 the duties of the Local Government Board were transferred to a new Ministry of Health, which also assumed duties connected with factory inspection and the medical examination of school children, etc.[1]

During the first two years of the war, the regular cabinet continued to direct the policy of the government; but because of its unwieldy size for military purposes, an inner cabinet was established in December, 1916, called the War Cabinet, which came to be composed of six members, only one of whom, the Chancellor of the Exchequer, was at the head of a department. The other members of the War Cabinet, including the Premier, devoted themselves to the conduct of the war to the exclusion of administrative details, and even of attendance in Parliament. In order to connect the War Cabinet with the ordinary administrative activities, which continued to be carried on by the other ministries and boards, a Cabinet Secretariat was organized. Minutes of the War Cabinet were also kept — an innovation in cabinet procedure; while full information was sent

[1] 9 and 10 Geo. V, c. 21.

by the Secretariat to each of the ministries affected by the decisions of this inner body.[1] During the war, Parliament virtually surrendered its control over the administration — at least over the Prime Minister, who seldom appeared in the House.

Despite these war-time developments, the parliamentary system of ministerial responsibility does not appear to have been permanently altered. A Committee on Reconstruction advocated in 1918 the establishment of a cabinet of ten members who should devote themselves to general policy and not be department heads;[2] but parliamentary opposition to this perpetuation of the War Cabinet was too strong, and to-day England has a cabinet of a score of members — about the size of cabinets before the war.[3] The Cabinet Secretariat, however, continues in existence as part of the regular administrative machinery.[4]

The Executive Departments

Although in origin and legal organization the departments of state are very unlike, yet the growth of custom, and the exigencies of parliamentary life, have, for practical purposes, forced almost all of them into something very near one common type. Whatever the legal form of the authority at their head, the actual control is now in nearly every case

[1] For the reports of the War Cabinet, cf. Cd. 9005, 1918, and Cd. 325, 1919. Cf. also F. A. Fairlie, *British War Administration*, pp. 31–58; R. L. Schuyler, "The British War Cabinet," *Political Science Quarterly* (1918).

[2] The Haldane Committee on the Machinery of Government, Cd. 9230, 1918.

[3] The Cabinet does not include the ministers of Transport and of Pensions, who are merely part of the ministry, which now contains 37 members. Cf. *The Constitutional Year Book*, 1924, xi.

[4] The Cabinet Secretariat is distinct also from the personal Secretariat of the Prime Minister. Cf. J. A. R. Marriott, *English Political Institutions*, 3d ed., p. xxv.

in the hands of a single responsible minister. Sometimes he is called a secretary of state; sometimes the chairman of a board; sometimes by a peculiar title, like the Chancellor of the Exchequer, who is the minister of finance, or the First Lord of the Admiralty, who is the minister of the navy. He is usually assisted by one or more parliamentary subordinates, and is always supported by a corps of permanent non-political officials, who carry on the work of the office.

The Permanent Civil Service

The history of the permanent civil service would be one of the most instructive chapters in the long story of English constitutional development, but unfortunately it has never been written. The nation has been saved from a bureaucracy, such as prevails over the greater part of Europe, on the one hand, and from the American spoils system on the other, by the sharp distinction between political and non-political officials. The former are trained in Parliament, not in administrative routine. They direct the general policy of the government, or at least they have the power to direct it, are entirely responsible for it, and go out of office with the cabinet; while the non-political officials remain at their posts without regard to party changes, are thoroughly familiar with the whole field of administration, and carry out in detail the policy adopted by the ministers of the day.

If it were not for three or four ministers, such as the Scotch Law Officers, who are expected to get themselves elected to Parliament if they can, but whose tenure of their positions does not depend upon their doing so, one might say that the public service is divided into political officers who must sit in Parliament, and non-political officers who must not. The keeping out of politics, and permanence of tenure naturally, in the long run, go together; for it is manifest that office

can be held regardless of party changes only in case the holders do not take an active part in bringing those changes to pass; and if, on the other hand, they are doomed to lose their places on a defeat at the polls of the party in power, they will certainly do their utmost to avert such a defeat. In England the abstinence and the permanence have been attained, and it is noteworthy that they are both secured by the force of opinion hardening into tradition, and not by the sanction of law. Although all officeholders, not directly connected with the conduct of elections, have now a legal right to vote, and are quite at liberty to do so, it is a well-settled principle that those who are non-political — that is, all who are not ministers — must not be active in party politics. They must not, for example, work in a party organization, serve on the committee of a candidate for Parliament, canvass in his interest, or make speeches on general politics. All this is so thoroughly recognized that one rarely hears complaints of irregular conduct, or even of actions of a doubtful propriety. In 1874, when the acts imposing penalties upon their taking an active part at elections were repealed,[1] it was perfectly well understood that they would not be permitted to go into party politics, and that the government was entitled to make regulations on the subject.[2] Those regulations are still in force,[3] and it is only by maintaining them that the civil servants can con-

[1] Electioneering by civil servants has been the subject of legislation. An Act of 1710 (9 Anne, c. 10, § 44) rendered liable to fine and dismissal any post-office official who "shall, by Word, Message, or Writing, or in any other Manner whatsoever, endeavour to persuade any Elector to give or dissuade any Elector from giving his Vote for the Choice of any Person . . . to serve in Parliament." Cf. Eaton, *Civil Service in Great Britain*, p. 85.

[2] In fact, in 1874 the bill was amended so as to make this clear. Hans. 3d Ser., ccxix. 797–800.

[3] Cf. Hans. 4th Ser., xvi. 1218; liii. 1131.

tinue to enjoy both permanence of tenure and the right to vote.

Permanence of tenure in the English civil service, like the abstinence from party politics, is secured by custom, not by law, for the officials with whom we are concerned here are appointed during pleasure, and can legally be dismissed at any time for any cause. Now, although the removal, for partisan motives, of officials who would be classed to-day as permanent and non-political, has not been altogether unknown in England, yet it was never a general practice.

The habit of discharging these officials on party grounds never having become established, it was not unnatural that with the growth of the parliamentary system the line between the changing political chiefs and their permanent subordinates should be more and more clearly marked; and this process has gone on until at the present day the dismissal of the latter on political grounds is practically unheard of, either in national or local administration.

Appointment by Competitive Examination

As early as 1834, examinations for appointment to the civil service began to be used, and these were gradually extended and assumed a competitive form. An Order in Council of June 4, 1870,[1] which is still the basis of the system of examinations, provides that (except for offices to which the holder is appointed directly by the crown, situations filled by promotion, and positions requiring professional or other peculiar qualifications, where the examinations may be wholly or partly dispensed with) no person shall be employed in any department of the civil service until he has been tested by the Civil Service Commissioners, and reported by them qualified to be admitted

[1] Com. Papers, 1870, xix. 1, p. vii.

on probation.[1] It provides further that the appointments named in Schedule A, annexed to the Order, must be made by open competitive examination; and this list has been extended from time to time until it covers the greater part of the positions where the work does not require peculiar qualifications, or is not of a confidential nature, or of a distinctly inferior or manual character, like that of attendants, messengers, workmen, etc.

Lay Chief and Expert Subordinate

Leslie Stephen, I think, remarks somewhere that the characteristic feature of the English system of government is a justice of the peace who is a gentleman, with a clerk who knows the law; and certainly the relationship between the titular holder of a public post, enjoying the honors, and assuming the responsibility, of office, and a subordinate, who, without attracting attention, supplies the technical knowledge and largely directs the conduct of his chief, extends throughout the English government from the Treasury Bench to the borough council.

The Relation between them

The theoretical relation between the political chief and his permanent subordinate is a simple one. The political chief furnishes the lay element in the concern. His function is to bring the administration into harmony with the general sense of the community and especially of Parliament. He must keep it in accord with the views of the majority in the House of Commons, and conversely he must defend it when criticized, and protect it against injury by any ill-considered action of the House. He is also a critic charged with the duty of rooting out old abuses, correcting the

[1] §§ 2, 7, and Schedule B. Cf. Orders in Council, Aug. 19, 1871, § 1; Sept. 15, 1902.

tendency to red tape and routine, and preventing the department from going to sleep or falling into ruts; and, being at the head, it is for him, after weighing the opinion of the experts, to decide upon the general policy to be pursued. The permanent officials, on the other hand, are to give their advice upon the questions that arise, so as to enable the chief to reach a wise conclusion and keep him from falling into mistakes. When he has made his decision they are to carry it out; and they must keep the department running by doing the routine work. In short the chief lays down the general policy, while his subordinates give him the benefit of their advice, and attend to the details.

The smooth working of a system of this kind evidently depends upon the existence of mutual respect and confidence between the minister and the permanent undersecretary. The permanent undersecretary ought to feel, and in fact does feel, a temporary allegiance to his chief, although of a different political party. He gives his advice frankly until the chief has reached a decision, and then he carries that out loyally. The minister on his part seeks the advice of the undersecretary on all questions that arise, making allowance for bias due to preconceived political or personal conviction.

A good minister must be a good administrator, but he must look to results, and not suppose that he knows as much about the technical side of the work as his permanent subordinate. For, as Bagehot quotes Sir George Cornewall Lewis, "It is not the business of a Cabinet Minister to work his department. His business is to see that it is properly worked."[1] If he attempts to go beyond his province, to be dogmatic and to interfere in details, he will cause friction and probably come to grief.

[1] *The English Constitution*, 1st ed., p. 240.

CHAPTER II

ENGLAND: PARLIAMENT

The Reform Acts

THE story of the Reform Act of 1832 has often been told: how, before its passage, members were elected to the House of Commons by many constituencies which contained very few voters; how in some cases these voters were the owners of land in old chartered boroughs which retained their privileges although they had ceased altogether to be inhabited; and how the act swept away these abuses, together with many local electoral customs, and regulated the franchise on more nearly uniform principles. The conditions it established remained in force until 1867–68, when other statutes enlarged the franchise and redistributed the seats — a process that was repeated in 1884–85. These latter acts brought in a very rough approximation to equal electoral districts, and extended the franchise to almost all men who occupied the same premises for a year. But the qualifications were cumbrous, being based upon some relation to land, and including not only the owners, but persons technically classed as occupiers, householders, and lodgers. The provisions worked injustice in many cases, and allowed men to vote in a number of different constituencies at the same election. There had long been a demand for a revision of the election laws, and a loud cry for the inclusion of women. Finally the war made it clear that soldiers ought to be allowed to vote, which they could not do under laws that made the franchise depend upon actual occupation.

The Act of 1918

The ministers at this time belonged to both the great parties, and the reform bill they brought in was not, as is usual, a party measure. It was the result of compromises made in a conference of members from both sides of the House of Commons; and hence, while it introduced universal suffrage based only upon residence, it contained also some provisions slightly favoring trade and education.

The Constituencies: Boroughs and Counties

The new act,[1] which received the royal assent on February 6, 1918, changed not only the franchise but also the constituencies. These still preserve the old distinction between boroughs and counties, the considerable towns being separate constituencies by themselves or cut into electoral divisions; and it may be noted that while a number of boroughs continue to elect two members as undivided districts, all the rest of the constituencies, in boroughs and counties, are single-member districts. The new act rearranged the constituencies afresh with a view to making them as nearly equal in population as possible.[2] The number of members in the House was raised from 670 to 709, 101 of which were allotted to Ireland; but as a result of the constitution of the Irish Free State in 1922 and the consequent loss of members from the Free State, the seats in the House of Commons were reduced to 615, 492 of which are allotted to England, 36 to Wales, 74 to Scotland and 13 to Northern Ireland.

[1] 8 Geo. V, c. 64, and for the constituencies in Ireland, c. 65.
[2] Cf. c. 64, Schedule 9, and c. 65.

The Universities

Beside the seats allotted to boroughs and counties there are a few reserved for the universities. They have, indeed, been increased by the act. The two members each of Oxford and Cambridge, the one for London, and the two elected by the four Scotch universities, have been retained; and there have been added, one member for the university of Wales, two for the English provincial universities as a group, another for those in Scotland, and one for Queen's at Belfast. These members are elected by all holders of a degree from the university,[1] whether men or women;[2] and, where more than one member is to be elected by a university constituency, the principle of minority representation is introduced by allowing each voter to cast only one vote according to the system of preferential, transferable voting.[3] The House of Lords wanted proportional representation for many other seats, as a protection against popular waves of impulse. To this the Commons would not agree; and finally a compromise was reached whereby, apart from the university constituencies, it was provided[4] that the crown may appoint commissioners to prepare a scheme for the choice, by proportional representation, of one hundred members in constituencies to be formed by combining existing districts into groups electing from three to five members. The scheme was to take effect if approved by both Houses of Parliament.

[1] § 2. Except honorary degrees. There are special provisions for the Scotch universities.

[2] For women, see § 4. As in other cases, women must be thirty years of age. Women who have qualified for a degree by residence and examination can vote although, as in Cambridge, the university does not confer degrees upon them.

[3] § 20. [4] § 20 (2).

The Parliamentary Franchise for Men

For boroughs and counties the old qualifications for voters were swept away, and the suffrage extended to all men who for six months prior to the biennial registration reside in the constituency or in an adjoining borough or county. This established complete manhood suffrage for residents; but one of the compromises in the act was the retention, to a certain extent, of a representation of business interests also. It took the form of allowing a man to vote in a constituency where he carries on his business, profession, or trade, although not a resident, if he occupies land or premises of the annual value of ten pounds.[1] He cannot, however, vote in more than one constituency of any kind besides the one in which he resides.[2] Provision is also made for voting by mail in the case of persons unavoidably absent from the election; and for soldiers, sailors, merchant seamen and fishermen who may, under certain circumstances, vote by proxy.[3] Moreover, soldiers and sailors in active military service who have attained the age of nineteen may vote, although the age for other men is twenty-one.[4]

The Local Franchise for Men

The right to vote for local governing bodies has always differed from the parliamentary franchise, and has not been the same for all local bodies. The act sought to simplify this also; but objection was raised to a complete extension of manhood suffrage to local elections, on the ground that the

[1] 8 Geo. V, c. 64, § 1.

[2] § 8. This includes the universities. The act also provides that at a general election the voting shall take place everywhere on the same day (§ 21), thereby abolishing a practice that was alleged to have been abused for party purposes.

[3] § 23. [4] § 5.

costs of local government fall on the rate payers alone; and that, as the rates are assessed only on the occupiers of land and buildings, they ought to be the voters. The act provided, therefore, that the local franchise shall be limited to occupiers, as owners or tenants, of any land or premises within the area.[1] The persons excluded are mainly servants, and bachelors living in the parental home; and, on the other hand, men are included, as before, who reside outside the area but carry on their occupation on their own account within it.

The Franchise for Women

The right of women to vote, which had not been acquired by violence, was achieved by women's work in the war. There was a general desire to extend the franchise to them, but it was not thought wise to create an electorate preponderately feminine, which would be the result of extending the franchise to women on the same terms as to men. To avoid this, their right to vote was limited in two ways, by age and by requiring them to be occupiers. The act provides,[2] therefore, that a woman shall be entitled to be a parliamentary elector if she is thirty years old, and occupies any dwelling, or any other land or premises of the annual value of five pounds, or is the wife of such an occupier. In local government elections she is entitled to vote as a man would be if she is an occupier in her own right; she is also entitled to vote if thirty years old and the wife of a man occupying premises in which they both reside. Thus a woman cannot vote for a member of Parliament unless she is thirty years old; but she can vote in local matters if twenty-one, provided she is an occupier in her own right, the reason being that in certain cases she already had this last privilege.

[1] Except furnished lodgings. 8 Geo. V, c. 64, § 3.

[2] § 4.

The act has doubled the parliamentary electorate, increasing the voters from eight millions to sixteen millions, chiefly by the addition of women. What the effect upon politics will be no one yet knows, and it is useless to attempt to predict. That it will bring about some change in the method of electioneering and the proceedings of candidates there can be little doubt.

Candidates and Elections

In fact, the act itself contains provisions that touch upon the position of candidates. An enlarged electorate would naturally involve increased expense, especially since the laws against corrupt practices limited the amount a candidate might spend to a fixed sum for each registered voter in the constituency. This is reduced for each voter to seven pence in a county and five pence in a borough, in addition to certain personal expenses and fees of the candidate[1] — a reduction not far from proportionate to the increase of the electorate. It leaves the total expenditure of the candidate nearly what it was before; but the act also provides that the charges of the returning officer for the erection of polling booths and for the attendants thereat, which were formerly paid by the candidates, shall be defrayed by the public treasury.[2] Fearing that this reduction in cost might multiply needlessly futile candidates the act obliges each of them to deposit one hundred and fifty pounds, to be forfeited if he fails to receive one-eighth of the votes cast.[3] It may be observed that the restrictions upon the cost of elections do not touch the practice known as nursing constituencies, that is, seeking the favor of the voters by spending money on public objects well in advance of the election.

[1] 8 Geo. V, c. 64, Schedule 4. [2] § 29. [3] §§ 26, 27.

In 1911 the House of Commons, by inserting an appropriation in its vote of supply introduced the payment of its members. In the same year a statute reduced the term of Parliament from seven to five years.[1]

The Commons' House

Even the arrangement of seats in the House is not without its bearing upon political life; and although a small matter, it affords another illustration of the principle that an institution which, instead of being deliberately planned, is evolved slowly, will develop in harmony with its environment, or force its environment into harmony with itself. The front bench at the upper end of the aisle, close at the right hand of the Speaker, is called the Treasury Bench, and is reserved for the ministers; the corresponding bench on the other side being occupied by the former ministers of the party now in Opposition. Behind these two benches sit for the most part men whose fidelity to their respective parties is undoubted, members whose allegiance is less absolute generally preferring seats below the gangway on either side.

The Speaker

The Speaker of the House of Commons occupies a highly honorable and important position, but in some respects the custom of his election is peculiar. If only one person is nominated, he is called to the chair without a vote. If more than one, they are voted upon successively, a majority being required for election.[2] The proposer and seconder are always private members, for it is considered more fitting that the ministers should not be prominent in the matter.[3] The

[1] 1–2 Geo. V, c. 13, § 7.
[2] May, p. 151.
[3] Cf. May, p. 150, note 3.

Speaker is, however, always selected by the government of the day, and a new Speaker is always taken from the ranks of the party in power. Sometimes the election is not uncontested, and this happened when Mr. Gully was chosen in 1895. But although the Speaker may have been opposed when first chosen, and although he is elected only for the duration of the Parliament, it has now become the invariable habit to reëlect him so long as he is willing to serve. The Speaker is purely a presiding officer. He has nothing to do with appointing any committees, or guiding the House in its work. He is not a leader but an umpire, otherwise he could not remain in the chair through changes of party. As an umpire, however, his powers are very great, and in some cases under the modern changes in the standing orders they are autocratic. Moreover, from his decision on those matters, or on any points of order, there is no appeal.[1] The House can suspend or change its own rules by a simple majority vote, but it cannot in a concrete case override the Speaker's construction of them.[2]

The Committees

No great representative assembly at the present day can do all its work in full meeting. It has neither the time, the patience nor the knowledge required. Its sittings ought not to be frittered away in discussing proposals that have no

[1] But the Speaker himself may submit a question to the judgment of the House. May, p. 331.

[2] The action of the Speaker can be brought before the House only by a motion made at another time after due notice, but this is, of course, almost useless for the purpose of reversing the ruling complained of: Hans. 3d Ser., cclviii. 10, 14. On the occasion when Speaker Brand made this ruling he intimated that a member making on the spot a motion to disagree with it would be guilty of disregarding the authority of the chair, and liable to suspension under the standing orders. *Ibid.*, p. 9.

chance of success; while measures that are to be brought before the whole body ought to be threshed out beforehand, their provisions carefully weighed and put into precise language, objections, if possible, met by concession and compromise, or brought to a sharp difference of principle. In short, they ought to be put into such a shape that the assembly is called upon to decide only a small number of perfectly definite questions. To enable it to do so intelligently it may be necessary also to collect information about doubtful facts. Modern assemblies have sought to accomplish these results mainly by committees of some kind; and in England, where the parliamentary form of government has reached a higher development than anywhere else, the chief instrument for the purpose is that informal joint committee of the houses, known as the cabinet. But unless Parliament were to be very nearly reduced to the rôle of criticizing the ministers, and answering yes or no to a series of questions propounded by them, it must do a part of its work through other committees.

The Committee of the Whole

The most important committee, the Committee of the Whole, is not in this sense a committee at all. It is simply the House itself acting under special forms of procedure; the chief differences being that the chairman of committees presides, and that the rule of the House forbidding a member to speak more than once on the same question does not apply. But the fact that a member can speak more than once makes it a real convenience for the purpose for which it is chiefly used, that is, the consideration of measures in detail, such as the discussion and amendment of the separate clauses of a bill, or the debates upon different items of appropriations. The Committee of the Whole has had a long

history.[1] It is called by different names according to the subject matter with which it deals. For ordinary bills it is called simply the Committee of the Whole. When engaged upon appropriations it is called Committee of the Whole on Supply, or in common parlance the Committee of Supply. When providing money to meet the appropriations it is called the Committee of Ways and Means.

Select Committees

Of the real committees the most numerous are the select committees whose normal size is fifteen members. They are usually appointed, in part at least, by the Committee of Selection, which is chosen by the House at the beginning of each session,[2] but whose members are in fact designated by an understanding between the leaders of the two great parties in the house. Its object is to secure an impartial body for the selection of other committees of all kinds, and so far is this object attained that in the memoir of Sir John Mowbray, who was its chairman continuously for thirty-two years, we are told that divisions in the committee are rare, and never on party lines.[3]

The sessional select committees are the Committee on Public Accounts,[4] which goes through the report of the Auditor and Comptroller General, considers in detail objections to the legality of any expenditures by the public departments, examines witnesses thereon, and reports to the House; the Committee on Public Petitions, appointed to inspect the numerous petitions presented to the House; [5]

[1] Redlich, *Recht und Technik des Englischen Parliamentarismus*, pp. 474–478.

[2] Standing Orders (relative to private business), 98.

[3] *Seventy Years at Westminster*, pp. 267 *et seq.*

[4] S. O., 75.

[5] S. O., 76–80.

and the Committee on the Kitchen and Refreshment Rooms, which has importance for the members of the House, though not for the general public.

The other select committees are created to consider some special matter that is referred to them, either a bill, or a subject upon which the House wishes to institute an inquiry.[1] In either case the chief object of the committee is to obtain and sift information.[2] Select committees are the organs, and the only organs, of the House for collecting evidence and examining witnesses; and hence they are commonly given power to send for persons, papers and records. They summon before them people whose testimony they wish to obtain. They keep minutes, not only of their own proceedings, but also of all evidence taken before them; and these, together with the report of their conclusions, are laid before the House [3] and published among the parliamentary papers of the session. The fact that men with all shades of opinions sit upon these committees, and have an opportunity to examine the witnesses, lifts their reports, and still more the evidence they collect, above the plane of mere party documents, and gives them a far greater permanent value.

[1] The question often arises whether inquiry shall be conducted by a committee of the house, or by a commission appointed by the government. When the matter is distinctly political, a committee of the house is the proper organ; but when the judgment of outside experts is needed, the other alternative is obviously preferable, several members of Parliament being often included in such cases. Naturally enough, the ministry and the members chiefly interested in pushing an inquiry do not always agree about the matter. One instance of a dispute on this point was that in relation to the grievances of post-office employees. Another famous example occurred upon the charges made by *The Times* against Parnell in connection with the forged Pigott letters.

[2] May, pp. 469–470.

[3] S. O., 59–61, 63.

Standing or Grand Committees

As the pressure for time in the House of Commons grew more intense, select committees that collected information were not enough. Something was needed that would save debate in the House, and for this purpose resolutions were adopted on December 1, 1882, for setting up two large committees on bills relating to law and to trade, whose deliberations should take the place of debate in the Committee of the Whole. As distinguished from select committees, which expire when they have made a report upon the special matters committed to their charge, they were made standing bodies, lasting through the session. They consisted of not less than sixty nor more than eighty members of the House, appointed by the Committee of Selection, which has power to discharge members and substitute others during the course of the session. In order to secure the presence of persons who may throw light on any particular bill, the same committee can also appoint not more than fifteen additional members for the consideration of that bill.

With a view to enlarging the legislative capacity of Parliament a select committee on Procedure in the House of Commons reported on May 25, 1906, in favor of increasing the number of standing committees from two to four, and making the reference of bills to them the normal, instead of an exceptional, procedure. The plan was adopted in the following year, and hence all bills, except money bills and bills for confirming provisional orders, are now referred to one of the standing committees, unless the House otherwise orders on a motion to be decided without amendment or debate. The bills are distributed among the committees by the Speaker.

A further change was made in 1919, when the number of

committees was enlarged from four to six, each being composed of from forty to sixty members. With the exception of money bills, and bills for confirming provisional orders made by the government as provided by statute, all bills are referred to one of these committees after the second reading unless the House decides otherwise. The procedure of these committees, which are called the A, B, C, D, E, and the Scottish Committee, is the same as that of the Committee of the Whole House, unless the House decides otherwise without amendment or debate. The bills are distributed among the committees by the Speaker; and in all but one of the Committees Government bills have precedence.[1] It appears that votes in these Committees are controlled, on serious questions at least, by party whips, and hence they do not impair the principle of ministerial responsibility, — a disadvantage of the committee system in France, — while they relieve the ministry as well as the House of much legislative detail.[2]

The object of the change was to give a better chance of enactment for measures which there is not time to debate in Committee of the Whole; and the provision that the House may vote not to send a bill to a standing committee was designed chiefly for the great party measures of the government which must always be debated in the House itself.

Procedure on Public Bills

A public bill, when presented, is read a first time, and in the case of important government bills, this is an occasion for a speech explaining its object, and a debate.

The next step, and, except on great party measures, the first occasion for a debate, is the second reading. This is the

[1] *Constitutional Year Book*, 1924, p. 177.

[2] Cf. T. S. Chien, *Parliamentary Committees, A Study in Comparative Government.* (Harvard University Thesis.)

proper stage for a discussion of the general principles of the bill, not of its details, and amendments to the several clauses are not in order.

After the second reading a bill, until 1907, went normally to the Committee of the Whole, with or without instructions, and now it goes there if the House so decides. When the order of the day for the Committee of the Whole is reached, the Speaker leaves the chair, and the House goes into committee without question put.[1] This is the stage for consideration of the bill in detail, and the clauses are taken up one after another, the amendments to each clause being disposed of in their order. Then new clauses may be proposed, and finally the bill is reported back to the House.

Normally a bill goes either to the Committee of the Whole or to a standing committee, but after it has been read a second time a motion may be made to refer it to a select committee. Such a reference simply adds a step to the journey of the bill, for when reported it goes to a standing committee or to the Committee of the Whole. A standing committee, on the other hand, is, as already explained, a substitute for the Committee of the Whole. It deals with the bill in precisely the same way, reporting it back to the House amended or unchanged.

When a bill has been reported from the Committee of the Whole with amendments,[2] and when it has been reported from a standing committee whether amended or not,[3] it is considered by the House in detail, upon what is known as the report stage. The object is to give the House an opportunity to review the work done in committee, and see whether it wishes to maintain the amendments there adopted.

[1] S. O., 51. Adopted in 1888.
[2] S. O., 39.
[3] S. O., 50.

The next, and now the last, stage of a bill in the House of Commons is the third reading. Like the second reading this raises only the question whether or not the House approves of the measure as a whole. Verbal amendments alone are in order, and any substantial alteration can be brought about only by moving to recommit.

Leaving out of account the first reading, which rarely involves a real debate, the ordinary course of a public bill through the House of Commons gives, therefore, an opportunity for two debates upon its general merits, and between them two discussions of its details, or one debate upon the details if that one results in no changes, or if the bill has been referred to a standing committee.

Procedure on Money Bills

The procedure in the case of financial measures differs in important respects from that followed in passing other bills. With some exceptions all the national revenues are first paid into the Consolidated Fund, and then drawn out of it to meet the expenditures of the government. The financial work of Parliament turns, therefore, upon the processes of getting money into and out of that fund. The second process comes first in the order of parliamentary business, and its nature is fixed by two standing orders, which date from the early years of the eighteenth century. One of them, adopted in 1707, provides that the House will not proceed upon any petition or motion for granting money but in Committee of the Whole House;[1] the other, that it will not receive any petition, or proceed upon any motion, for a grant or charge upon the public revenue unless recommended from the crown.[2]

[1] S. O., 67.

[2] S.O., 66. May (p. 527) points out that these two rules, together with S.O., 68, adopted in 1715, that the House will receive no petition for com-

This last rule, first adopted by a resolution in 1706, and made a standing order in 1713,[1] was designed to prevent improvident expenditure on private initiative. It has proved not only an invaluable protection to the Treasury, but a bulwark for the authority of the ministry.[2] Its importance has been so well recognized that it has been embodied in the fundamental laws of the self-governing colonies;[3] while some foreign countries, like France and Italy, that have copied the forms of parliamentary government, without always perceiving the foundation on which they rest, have suffered not a little from its absence.

As grants of money can be taken up only in Committee of the Whole, and only on the recommendation of the crown, — that is, of a minister, — the House resolves itself, early in the session, into Committee of the Whole on Supply, to consider the estimates submitted by the government.[4]

Certain fixed charges, such as the interest on the national debt, the royal civil list, and the salaries of the judges, are payable by statute out of the Consolidated Fund, and hence do not require an annual vote of Parliament, or come before

pounding a revenue debt due to the crown without a certificate from the proper officer stating the facts, were for more than a century the only standing orders of the House.

[1] Todd, *Parl. Government in England*, 2d ed., i. 691.

[2] As an illustration of the fact that the rise of the authority exerted by ministers over Parliament was contemporary with the loss by the king of personal legislative power, Todd (ii. 390) remarks that this rule was first adopted in 1706, and the last royal veto was given in 1707.

[3] E. g., British North Amer. Act, § 54. Commonwealth of Australia Constitution Act, § 56.

After the government of India was transferred from the East India Company to the crown, in 1856, the rule was extended to motions for a charge upon the Indian revenue. S. O., 70.

[4] S. O., 14, provides that the Committees of Supply and Ways and Means shall be set up as soon as the address in reply to the king's speech has been agreed to.

the Committeee of Supply. The estimates for the rest of the expenditures for the coming year, known as the supply services, are divided into three parts, relating to the army, the navy, and the civil services. The last of the three is divided into classes, and all of them are divided into grants or votes, which are in turn subdivided into subheads and items. Each grant is the subject of a separate vote in Committee of Supply, and amendments may be moved to omit or reduce any item therein.

But the committee merely passes and reports to the House resolutions in favor of those grants, and the money cannot be paid out of the Consolidated Fund without the authority of a statute. The next step is taken in the Committee of the Whole on Ways and Means, where on the motion of a minister another resolution is passed, that to make good the supply already voted, the sum required be granted out of the Consolidated Fund. This in turn must be reported to and confirmed by the House.[1] A bill called a Consolidated Fund Bill is then brought in to give effect to the resolution. The bill, with the separate grants, annexed in a schedule, goes through the ordinary stages; but the time spent upon it is short, because its only object being to authorize the issue of money to cover the supply already voted, no amendment can be moved to reduce the amount, or change the destination, of the grants.[2]

The Budget

So much for the process of getting money out of the Consolidated Fund. That of getting money into the fund goes on at the same time, but independently. It is usually early

[1] On the procedure in the Committee of Ways and Means, and on Report from Committee of Supply and of Ways and Means, see May, pp. 588 *et seq.*

[2] May, p. 526; Ilbert, *Manual*, § 245, note.

in April that the Chancellor introduces his budget in the Committee of Ways and Means. In an elaborate speech he reviews the finances of the past year, comparing the results with the estimates, and dealing with the state of trade and the national debt. He then refers to the estimates already submitted, and coming to the gist of his speech, and the part of it that is awaited with curiosity, he explains how he proposes to raise the revenue required to meet the expenditures. The budget speech of the Chancellor of the Exchequer is followed by a general discussion of the questions he has raised, and either at once, or on subsequent days, by debates and votes upon the resolutions he has brought in. The resolutions when adopted are reported to the House for ratification, but as in the case of supply, they have no legal effect until enacted in the form of a statute.

The Public Accounts

The whole initiative, as regards both revenue and expenditure, lies with the government alone. The House has merely power to reject or reduce the amounts asked for, and it uses that power very little. Financially, its work is rather supervision than direction; and its real usefulness consists in securing publicity and criticism rather than in controlling expenditure. It is the tribunal where at the opening of the financial year the ministers must explain and justify every detail of their fiscal policy, and where at its close they must render an account of their stewardship. This last duty is highly important. The House receives every year reports of the administration of the finances from three independent bodies, or, to be more accurate, it receives two distinct sets of accounts and one report. As soon as possible after the close of the financial year, the Treasury submits the Finance Accounts, which cover all

receipts paid into, and all issues out of, the Consolidated Fund, giving the sources from which the revenue was derived and the purpose for which the issues were made.

Meanwhile the Comptroller and Auditor General — who holds his office during good behavior, with a salary paid by statute directly out of the Consolidated Fund, and who considers himself in no sense a servant of the Treasury, but an officer responsible to the House of Commons [1] — examines the accounts of the several departments. This is a matter requiring much time, and it is not until the opening of the next regular session that he presents what are known as the Appropriation Accounts,[2] covering in great detail the actual expenditures in all the supply services, with his reports and comments thereon.[3]

His accounts and reports are referred to the Committee of Public Accounts, which consists of eleven members of the House chosen at the beginning of the session,[4] and includes the Financial Secretary of the Treasury, some one who has held a similar office under the opposite party, and other men interested in the subject. It inspects the accounts and the Comptroller and Auditor General's notes of the reason why more or less than the estimate was spent on each item. It inquires into the items that need further explanation,

[1] See his evidence before the Com. on Nat. Expend., Com. Papers, 1902, vii. 15, Qs. 764–769, 831.

[2] Thus the Parliamentary Papers for 1903 contain the Finance Accounts for the financial year ending March 31, 1903, and the far more elaborate Appropriation Accounts for the year ending March 31, 1902.

[3] He presents also separate accounts of the Consolidated Fund services, and other matters, with reports upon them.

[4] S. O., 75. For a brief history of the system of audit, and the laying of accounts before Parliament, see the memorandum by Lord Welby. Rep. Com. on Nat. Expend., Com. Papers, 1902, vii. 15, App. 13. See also the description by Hatschek, in his *Englisches Staatsrecht* (pp. 495–500), of the introduction into England of double entry and the French system of keeping the national accounts.

examining for the purpose the auditing officers of the departments, and other persons; and it makes to the House a report or series of reports, which refer in detail to the cases where an excess grant by Parliament is needed, or an approval of a transfer between grants in the military departments.

Framing Legislative Questions

For the purpose of collective action every body of men is in the plight of M. Noirtier de Villefort in " Monte Cristo," who was completely paralyzed except for his eyes. Like him it has only a single faculty, that of saying Yes or No. Individually the members may express the most involved opinions, the most complex and divergent sentiments, but when it comes to voting, the body can vote only Yes or No. Some one makes a motion, some one else moves an amendment, perhaps other amendments are superimposed, but on each amendment in turn, and finally on the main question, the body simply votes for or against.

Obviously, therefore, it is of vital importance to know who has power to ask the question. In small bodies that have limited functions and an abundance of time, the members are free to propose any questions they please; but in large assemblies, all of whose proceedings are of necessity slower, this freedom is curtailed by lack of time, especially if the range of activities is wide. Hence the legislatures of all great states have been constrained to adopt some process for restricting or sifting the proposals or bills of their members. The most common device is that of referring the bills to committees, which can practically eliminate those that have no serious chance of success, and can amend others, putting them into a more acceptable form. In such cases the committees enjoy, if not the exclusive privilege of proposing questions to the legislature, at least the primary

right of framing the questions that are to be submitted, and this gives them a momentous power.

The cabinet has been said to be a committee, and the most important committee of the House of Commons; but it is really far more. Unlike an ordinary committee, it does not have the bills of members referred to it. On the contrary it has the sole right to initiate, as well as to frame, the measures it submits to the House; and these comprise, in fact, almost all the important bills that are enacted. By far the greater part of legislation originates, therefore, exclusively with the ministers. The system of a responsible ministry has obstructed the growth of committees; because, in the case of government measures, the chief function of such committees, that of sifting bills and putting them into proper shape, is performed by the cabinet itself; and also because, as will be shown hereafter, the authority of the cabinet would be weakened if other bodies, not necessarily in accord with it, had power to modify its proposals. In this connection it may be observed that in the domain of bills for private and local objects, to which the responsibility of the cabinet does not extend, there has developed a most elaborate and complete set of committees, to which all such bills are referred.

Private Members' Bills

Private members are free to bring their public bills before the House, unfettered by any committee, provided they can find a chance to do so in the extremely meagre allowance of time at their disposal. In short the Commons have solved the question of time by giving most of it to the government, and leaving the private members to scramble for the rest by drawing lots for it.

A private member must be very fortunate in the ballot,

or he must have a number of friends interested in the same bill, to get it started with any prospect of success; and even then there is scarcely a hope of carrying it through if a single member opposes it persistently at every point. Only ten or fifteen such bills are enacted a year, and of these only a couple provoke enough difference of opinion to lead to a division during their course in the House.[1]

All the sittings not reserved for private members are at the disposal of the government, which can arrange the order of business as it pleases.[2]

The Cabinet's Control of Legislation

The responsibility of the ministers for the legislation they propose is a comparatively recent matter.[3] By the middle of the nineteenth century it had begun to be recognized, and at the present day, the ministers would treat the rejection of any of their important measures as equivalent to a vote of want of confidence. Moreover, the government is responsible not only for introducing a bill, but also for failing to do so. At a meeting in the autumn the cabinet decides upon the measures it intends to bring forward, and announces them in the king's speech at the opening of the session. Amendments to the address in reply are moved expressing regret that His Majesty has not referred to some measure that is desired, and if such an amendment were carried, it would almost certainly cause the downfall of the ministry.

[1] Although the time at the disposal of private members has not changed much of late years, the number of these bills enacted, and especially of those enacted against opposition, has diminished sensibly. In the decade from 1878 to 1887 about twenty-three such bills were passed a year, and on four or five of these divisions took place.

[2] S. O., 5.

[3] Cf. Todd, *Parl. Government in England*, ii. 368. Ilbert, *Legislative Methods and Forms*, pp. 82, 216.

Following upon the responsibility for the introduction and passage of all important measures has come an increasing control by the ministers over the details of their measures. It was formerly maintained that the House could exercise a great deal of freedom in amending bills, without implying a loss of general confidence in the cabinet.[1] But of late amendments carried against the opposition of the Treasury Bench have been extremely rare. This does not mean that the debates on the details of bills are fruitless. On the contrary, it often happens that the discussion exposes defects of which the government was not aware, or reveals an unsuspected but widespread hostility to some provision; and when this happens the minister in charge of the bill often declares that he will accept an amendment, or undertakes to prepare a clause to meet the objection which has been pointed out.[2] But it does mean that the changes in their bills are made by the ministers themselves after hearing the debate, and that an amendment, even of small consequence, can seldom be carried without their consent. This is the natural outcome of the principle that the cabinet is completely responsible for the principal public measures, and hence must be able to control all their provisions so long as it remains in office.

The Commons' Control over Administration

If the relations between the cabinet and the House of Commons in legislative matters have changed, their rela-

[1] Cf. Todd, *Parl. Government in England*, ii. 370–372.

[2] The minister often says that he will consider whether he can meet the views that have been expressed; and then on the report stage he brings up a compromise clause. An interesting example of this occurred on July 23, 1906, when the Opposition complained that sufficient time had not been given for debating the educational council for Wales, the provisions proposed having been profoundly changed since it had been last before the House. The government replied that the changes had been made to meet objections raised by the Opposition itself. Hans. 4th Ser., clxi. 741 *et seq.*

tions in executive matters have been modified also. If the cabinet to-day legislates with the advice and consent of the House, it administers subject to its constant supervision and criticism. In both cases the relation is fundamentally the same. In both the English system seems to be approximating more and more to a condition where the cabinet initiates everything, frames its own policy, submits that policy to a searching criticism in the House, and adopts such suggestions as it deems best; but where the House, after all this has been done, must accept the acts and proposals of the government as they stand, or pass a vote of censure and take the chances of a change of ministry or a dissolution.

The House of Commons does not often pass votes asking for executive action in the future, but its members criticize the conduct of the government in the past freely and constantly. The opportunities for doing so are, indeed, manifold. There is first the address in answer to the king's speech at the opening of the session; then the questions day by day give a chance, if not for direct criticism, at least for calling the ministers to account; then there are the motions to adjourn; the private members' motions; the debates on going into the Committees of Supply and Ways and Means; the discussions in the Committee of Supply itself; the debates on the Consolidated Fund Resolutions, on the Appropriation Bill, and on the Budget; and, finally, the formal motions of want of confidence.

Criticism and Censure

But first it is important to distinguish between individual criticism by members, and collective censure by vote of the House. The former, whether coming from the seats behind the Treasury Bench, or from the opposite side of the floor,

is in the nature of a caution to the ministers, an expression of personal opinion that is likely to find more or less of an echo outside of Parliament. It does not in itself imperil the position of the government at the moment, although the errors of the ministers pointed out in this way go into the great balance of account on which the nation renders its verdict at the next general election. But a collective censure by vote of the House may mean immediate resignation. Now the system of a responsible ministry implies the alternation in power of two parties holding different views upon the questions of the day. If it does not imply this; if the fall of one cabinet is followed by the appointment of another with a similar policy; then public life will revolve about the personal ambitions and intrigues of leading politicians, — a condition that has caused much of the discredit now attached to the parliamentary system in some continental states. But if a change of ministry involves the transfer of power to an Opposition with quite a different programme, it is clear that the change ought not to take place until the nation has declared, either at the polls, or through its representatives in the House of Commons, that it wishes that result. The ministers ought, therefore, to stand or fall upon their general policy, upon their whole record, or upon some one question that in permanent consequence outweighs everything else, not upon a particular act of secondary importance. Moreover the judgment ought to be given after mature deliberation, not in the heat of a debate upon some political blunder brought suddenly to the notice of the House. The Opposition can at any time claim to move a vote of want of confidence, and within reasonable limits the cabinet will always assign a day for the purpose. But this is quite a different matter from the criticism of particular acts. Whatever the precise form of any motion

may be, if the object is to turn the ministry out, every member goes into one or the other lobby, according to his desire that the cabinet shall stand or fall. The judgment of the House is passed not upon any one act or question of policy, but distinctly upon the record of the ministry as a whole; and a defeat must be immediately followed by resignation or dissolution.

From a survey of the various methods by which the ministers can be called to account in the House of Commons, it is clear that the opportunities to air grievances, to suggest reforms, and to criticize the government for both large matters and small, for their general policy and their least administrative acts, are many and constant. For the object they serve, that of turning a searchlight upon the government, and keeping the public informed of its conduct, they are abundant. On the other hand, the opportunities to pass judgment by a definite vote upon particular acts of the ministers, as distinguished from their conduct as a whole, have diminished very much, and there is a marked tendency to make a definite expression of opinion on such matters by vote of the House more and more difficult. Such a tendency is entirely in accord with the true principle of parliamentary government. There ought to be the fullest opportunity for criticism; but the cabinet must be free not only to frame its own policy, but also to carry that policy through, and it ought not to be shackled, or thrust out, so long as its conduct of affairs is on the whole satisfactory to the nation.

Parliament the Inquest of the Nation

The system of a responsible ministry can develop in a normal and healthy way only in case the legislative body is divided into two parties, and under those conditions it is the inevitable consequence of the system that Parliament

cannot support the cabinet on one question and oppose it on another. The programme of the ministers must be accepted or rejected as a whole, and hence the power of initiative, both legislative and executive, must rest entirely with them. This is clearly the tendency in Parliament in modern times.[1] The House of Commons has found more and more difficulty in passing any effective vote, except a vote of censure. It tends to lose all powers except the power to criticize and the power to sentence to death. Parliament has been called the great inquest of the nation, and for that purpose its functions have of late been rather enlarged than impaired. Nor are the inquisitors confined to any one section of the House, for while that part is played chiefly by the Opposition, the government often receives a caution from its own supporters also. If the parliamentary system has made the cabinet of the day autocratic, it is an autocracy exerted with the utmost publicity, under a constant fire of criticism; and tempered by the force of public opinion, the risk of a vote of want of confidence, and the prospects of the next election.

Private Bill Legislation

If the direction of important legislation of a public character lies almost altogether in the hands of the ministers, special laws affecting private or local interests are not less completely outside of their province. Private bill procedure has both a legislative and a judicial aspect. The final aim being the passage of an act, a private bill goes through all the stages of a public bill, and the records of its progress appear in the journals of the House. But the procedure is

[1] Redlich ends his book on the procedure of the House of Commons with the remark (p. 800), that the rules of a legislative body are the political manometer, which measures the strain of forces in the parliamentary machine, and thereby in the whole organism of the state.

also regarded as a controversy between the promoters and opponents of the measure, and this involves an additional process of a judicial character.

The committee stage of the bill, for the consideration of its provisions in detail, is devolved upon a private bill committee. Here takes place the judicial process, or trial of the controversy between conflicting interests, which presents the peculiar feature of the English procedure. All opposed private bills are referred under the rules to the Committee of Selection, which divides them into groups and refers each group to a committee, consisting of a chairman and three members not locally or otherwise interested, whom it appoints for the purpose.[1]

The hearing of the parties before the committee follows the pattern of a trial in a court of law, even to the standing of the counsel employed. The proceedings are strictly judicial in form, the barristers examining and cross-examining the witnesses and making the arguments in the ordinary way. Moreover, if either party has vexatiously subjected the other to expense, the committee can award costs like a court of law, and this is occasionally done.[2]

The English system of private bill legislation has its defects, but they are far more than outweighed by its merits. The curse of most representative bodies at the present day is the tendency of the members to urge the interests of their localities or their constituents. It is this more than anything else that has brought legislatures into discredit, and

[1] S.O.P.B., 98, 103, 105–106, 108, 110–113, 116–117, 208. Until a few years ago there was a paid referee who could sit on the committee with an advisory voice but no vote. May, p. 728. There were formerly two paid referees, and later only one. The procedure is slightly different in the case of railway, canal, divorce, police, and sanitary bills, but the principle is substantially the same.

[2] May, pp. 781–782.

has made them appear to be concerned with a tangled skein of private interests rather than with the public welfare.[1] It is this that makes possible the American boss, who draws his resources from his profession of private bill broker. Now the very essence of the English system lies in the fact that it tends to remove private and local bills from the general field of political discussion, and thus helps to rivet the attention of Parliament upon public matters. A ministry stands or falls upon its general legislative and administrative record, and not because it has offended one member by opposing the demands of a powerful company, and another by ignoring the desires of a borough council. Such a condition would not be possible unless Parliament was willing to leave private legislation in the main to small impartial committees, and abide by their judgment.

The House of Lords

The upper house of the British Parliament contains several kinds of members, for it must be remembered that every peer has not a right to sit, and all the members are not, in the same sense, peers.

First there are the peers with hereditary seats. They consist of the peers of England created before the union with Scotland in 1707, the peers of Great Britain created between that time and the union with Ireland in 1801, and the peers of the United Kingdom created thereafter. Their titles in the order of their rank are those of dukes, marquises, earls, viscounts, and barons. At present they are about six hundred in number, and they are increased continually, for the crown, that is the ministry of the day,

[1] For a careful study from this point of view of a fairly good legislative body, by one of its members well fitted to observe, see an article by Francis C. Lowell, in the *Atlantic Monthly*, lxxix. 366–377, March, 1897.

has unlimited power to create hereditary peers of the United Kingdom.[1]

When the union with Scotland was made, the Scotch peers were much more numerous in proportion to population than the English; and therefore, instead of admitting them all to the House of Lords, it was provided that they should elect sixteen representatives of their order for the duration of each Parliament. No provision was made for the creation of new Scotch peers, so that with the dying out of families, and the giving of hereditary seats to Scotch peers by creating them peers of the United Kingdom, the number of those who do not sit in the House has greatly diminished.

The same problem arose upon the union with Ireland a hundred years later; but in this case the Irish peers were empowered to elect twenty-eight of their number representatives for life, and it was provided that one new Irish peerage might be created for every three that became extinct, until the number[2] fell to one hundred, a limit above which it cannot be raised.[3] There is another difference between the Scotch and Irish peers. The former are wholly excluded from the House of Commons, but the latter can be elected by any constituency in Great Britain.

The only spiritual peers in the House of Lords to-day are the English bishops, for the established church of Scotland is Presbyterian in form, and the Irish Anglican bishops lost their seats when their church was disestablished in 1869. All the English bishops, moreover, do not have seats, because as the sees were increased it was not thought wise to

[1] At one time the House of Lords held that a Scotch peer could not be given an hereditary seat as a peer of Great Britain; but this decision was afterwards reversed. A peer so created can still vote for representatives as a Scotch peer. Pike, *Constitutional History of the House of Lords*, pp. 361–363.

[2] Exclusive of those having hereditary seats under other titles.

[3] The number is now less than one hundred.

enlarge the representation of the church; and, therefore, it was provided that the Archbishops of Canterbury and York, the Bishops of London, Durham and Winchester, and of the rest only the twenty seniors in the order of incumbency, should have seats in the House.

The House of Lords is not only a legislative chamber but also the highest court of appeal for the United Kingdom. When it acts as a court only those members who hold, or have held, high judicial office take part; but there are rarely enough of these for a court of last resort, and hence four additional judges are provided by the appointment of Lords of Appeal in Ordinary, who are peers for life. It may be added that the presiding officer of the House is the Lord Chancellor, who fills at the same time the highest judicial office in the Kingdom.

The Powers of the House of Lords

Save for an ancient custom, rigidly insisted upon by the Commons, that the Peers must not initiate or amend bills to raise or spend money, the House of Lords had the same legislative rights as the other chamber until recent events brought a crisis in its history. It had always been in the habit of amending the measures of the cabinet, sometimes very freely. In fact the Lords were bolder in the twenty years preceding 1911 than they had formerly been. In 1893 they rejected Mr. Gladstone's Home-Rule Bill, and at the succeeding general election in 1895 the people appeared to ratify their action by returning a Unionist majority to Parliament. This emboldened the Lords to claim a right of appeal from the cabinet and the majority in the Commons to the electorate — a right, it was said, to demand a sort of referendum. That might have been well enough had not the House of Lords always acted with one of the great parties in

the state and opposed the other. While the Conservatives were in power it was docile, but when the Liberals came into office in 1906 it rejected or mutilated a series of government measures.

Finally, in 1909, the expense of old-age pensions caused the Chancellor of the Exchequer to propose heavy taxes on the unearned increment — that is the increase in value — of land, and on undeveloped land in or near cities, together with a supertax on incomes and an increase of the death duties. The Conservatives were exasperated, and when the finance bill came before the Lords they voted " that this House is not justified in giving its consent to this Bill until it has been submitted to the judgment of the country." The Liberal cabinet accepted the challenge, dissolved Parliament, and, although it lost seats at the election in January, 1910, it obtained a majority in the new House of Commons, and the finance bill passed into law.

The Act of 1911

The Liberals were not satisfied. They had made up their minds to restrict the power of the Lords, and a government bill was brought in for the purpose. Finding that the Lords were certain to reject it, the cabinet again dissolved Parliament, and at the election in December, 1910, was again victorious. The Commons passed the bill; the Lords still hesitated, but a threat to create peers enough to turn the scale brought many of them round. A majority of the Lords voted in its favor and it became law on August 18, 1911.[1]

In substance the act provides that if a bill to raise or expend money, which has been passed by the Commons and sent to the Lords at least a month before the end of the

[1] 1–2 Geo. V, c. 13.

session, is not passed by them without amendment within one month it shall become an act on receiving the royal assent;[1] and that if any other public bill passed by the Commons in three successive sessions is not passed by the Lords without amendments, or with such amendments as the Commons accept, it shall become an act on receiving the royal assent, provided two years have elapsed between the first and last vote in the Commons. On the questions whether a bill is a money bill or not, and whether the provisions of the act have been complied with, the decision of the Speaker of the House of Commons is final. Over money bills, therefore, the power of the Lords is virtually abolished, while on other bills it can propose amendments and can delay action for two years.

Restricting the power of the Lords was to be followed by a reorganization of the composition of their house. The problem, however, of constructing an upper chamber strong enough to be useful, and not so strong as to hamper a ministry responsible only to the Commons, is not a simple matter. The subject has been carefully considered by a commission, but as yet no action has been taken by Parliament.[2]

[1] Provisions dealing with the raising and expenditure of money by local authorities are not included.

[2] In 1917 the Prime Minister appointed what was called a Second Chamber Conference, composed of representatives of the House of Commons and the House of Lords, under the chairmanship of Lord Bryce. While this Conference was unable to agree upon a proposal for reform, Lord Bryce wrote a letter to the Prime Minister, proposing to settle disagreements between the two houses by a Standing Conference Committee of sixty members, chosen equally by each house, and deciding by a majority of three. This plan would have strengthened the House of Lords. Cf. "Conference on the Reform of the Second Chamber: Letter from Viscount Bryce to the Prime Minister," Cd. 9038, 1918. No action has been taken upon this or any other suggestion. The subject has, however, been periodically discussed, the last time being in the spring of 1925, when Lord Birkenhead proposed that the membership of the Lords be reduced from 700 to 300. Of the latter number 120 might

The Cabinet and the Country

We have now considered the relation of the cabinet to the administrative service, to the House of Commons, and to the House of Lords. There remains to be touched upon its relation to the country.

If the predominance of the House of Commons has been lessened by a delegation of authority to the cabinet, it has been weakened also by the transfer of power directly to the electorate. The two tendencies are not, indeed, unconnected. The transfer of power to the electorate is due in part to the growing influence of the ministers, to the recognition that policy is mainly directed, not by Parliament, but by them. The cabinet now rules the nation by and with the advice and consent of Parliament; and for that very reason the nation wishes to decide what cabinet it shall be that rules. No doubt the ministry depends for its existence upon the good pleasure of the House of Commons; but it really gets its commission from the country as the result of a general election.

The passing of political power from the House of Commons to the people is shown by many unmistakable signs, and by none more clearly than by the frequent reference in Parliament itself to the opinions of the " man in the street." He is said to fear this, or be shocked by that, or expect the other; and the House is supposed to pay some regard to his views. Then there is the fact that Parliament is no longer the only place where the party leaders make notable

consist of eminent men nominated because of their public position, and 180 chosen by the peers. The adjudication of what were or were not money bills he would entrust to a Joint Committee of the two Houses of which the Speaker should be chairman. Like other speakers on the subject, he accepted the Parliament Act of 1911, in so far as it defined the powers of the House of Lords, as irrevocable. Cf. *Manchester Guardian*, April 3, 1924.

speeches. In short, the predominance of the House of Commons as the great forum for the discussion of public questions has been undermined by the rise and growth of the platform. It has now become a settled custom for the cabinet ministers and the leaders of the parliamentary Opposition to make a business of speaking during the late autumn and the spring recess; and the habit tends to magnify their power, for they are the only persons who have fully the ear of the public. Frequent public addresses by the men in whom the whole responsibility for the conduct of national affairs is concentrated, and by those who will be responsible when the next change of ministry occurs, cannot fail to educate the voters, and quicken their interest in all the political issues of the day. The rulers of the country, and those who both have been and will be her rulers, fight at close range across a table for six months of the year, and during the rest of the time they carry on the ceaseless war by public speaking. As in the Athenian democracy, the citizens witness a constant struggle among rival statesmen for supremacy, but in England they are merely spectators until a general election summons them to give their verdict. One can hardly conceive of a system better calculated to stimulate interest in politics without instability in the government.

CHAPTER III

ENGLAND: PARTY

Parties during and since the War

BEFORE the war there were in England two principal parties, Conservative and Liberal, one or the other of which controlled a majority in the House of Commons; for although the Labour Party elected a few members, they were not numerous enough to hold the balance of power. The outbreak of the war caused the parties to drop their dissensions in view of the need of uniting all the forces of the country to resist the national enemy. By-elections were not contested, and in May, 1915, the cabinet was reorganized as a coalition, containing twelve Liberals, eight Unionists, and one Labour member, thus reflecting roughly the party composition of the House. The predominance of the Liberals in the Cabinet was short-lived; for when Mr. Lloyd George replaced Mr. Asquith as Prime Minister, in December, 1916, the Unionists were given a majority of the positions. From the very beginning, the coalition involved difficulties, which became great enough to divide the Liberal party into two divergent groups, some of the members supporting Mr. Lloyd George and the coalition, while others in 1917–18 followed Mr. Asquith after he had resigned from the ministry. Moreover, the Labour party withdrew its support from the coalition in the summer of 1918. Despite these desertions the combination of Mr. Lloyd George and his followers with the Conservatives continued to hold a majority in the House of Commons, and won a sweeping victory in the elections of December,

1918, securing 472 out of a total of 707 seats. It governed the country until October, 1922, when a meeting of the Conservatives voted to withdraw and contest the next election as a separate party. Having lost his majority as a result of this action, Mr. Lloyd George resigned, and Mr. Bonar Law, the Conservative leader, formed a ministry. Parliament was thereupon dissolved; and in the election of November, 1922, his followers carried seats enough in the House of Commons to secure an absolute majority of 73; while Labour carried 138 seats, which made it the official Opposition party, the Lloyd George Liberals having 57 seats, and the Asquith Liberals 60. As a result of this election, government by coalition came to an end, and the administration was once more in the hands of a single party commanding a majority of the House.

The system of government by two parties, one in power and the other in opposition, was, however, threatened by the rise of the Labour Party, whose voting strength in the country had increased from 62,698 in 1900 to 5,471,000 in 1924.[1] In view of this growth, it appeared likely that England might have three strong parties, no one of which would long have a clear majority. In such a case the results in England would be different from those in France, because there the public is not directly disturbed by ministerial changes since they are not accompanied by a dissolution of parliament and a new general election; whereas in England the overthrow of unstable cabinets would mean not only frequent ministries but as frequent elections, creating an intolerable situation, not only for members of Parliament, but for the life of the country as a whole. This came as a result of the election held in the fall of 1923, in which the

[1] Cf. the table, "Record of Political Events," *Political Science Quarterly*, March, 1924, vol. xl, no. 1, Supplement, p. 123.

Conservative cabinet appealed to the country on the issue of protection and a preferential tariff in favor of the Dominions. It reduced the seats of the Conservatives from 344 to 258, while the Liberal members increased to 158 and those of the Labour Party to 191. The Conservatives were still the largest single party in the Chamber, but they had clearly lost the confidence of the country, and therefore the cabinet resigned. Although the Liberals were the weakest of the three parties they held the balance of power, and consequently, if they did not form a coalition ministry with the Labour Party, they were bound to support a purely Labour government so long as it followed a policy which did not violate Liberal principles. That is what in fact happened when Mr. Ramsay MacDonald, the leader of the Labour Party, formed a strict party government.

The situation at this time was correctly described by Professor Adams of Oxford when he said: "No one of the three parties commands a majority in the Commons, and the mood both of Parliament and of the people is not favorable to coalitions. For the present, too, each party is jealous of its independence, and we therefore are likely for some time to see a minority of the House entrusted with the control of the administration and the initiative in policy and legislation. . . . Further, there is a desire both among Conservatives and Liberals to see that Labour receives not only fair play but a very good chance of showing its capacity in managing the affairs of the nation. That feeling is no less strong in the country, and any party which tried unduly to embarrass the new government before it had the opportunity of doing its best under difficult circumstances would be likely to meet with diminished support in the next election. . . . On the other hand, it is evident that no policy can be carried through in the present House of Com-

mons by any party if it arouses strong opposition in the other two parties, which together form the majority of the House. Consequently, Labour must defer its more far-reaching proposals, which do not commend themselves to the other parties, until such time as it obtains from the nation a majority in the Commons.[1]"

This prophecy came true only for a time, because the British public tired of a minority government sooner than might have been expected. At the outset, the government announced that it would not regard defeat on minor measures as a vote of lack of confidence; and it was defeated, without resigning, ten times between February 12 and August 7, 1924. It could not, however, ignore the censure by both the opposition parties of the Russian treaty, and of its failure to prosecute for seditious publication. Therefore the MacDonald government dissolved the Parliament in October, 1924. The belief of the English people in a government by party majority was strikingly illustrated in the election that followed. The Conservatives were returned to power with a clear majority, having 412 seats; while the Labour members were reduced to 142 and the Liberals to 40.[2] Apparently Labour welcomed the election as much

[1] W. G. S. Adams, "England After the Election," *Foreign Affairs*, March 15, 1924.

[2] The change of a few votes in England as well as in France may mean a very great change in the seats in Parliament. In the elections of November, 1923, the Conservative majority of 74 in the House of Commons was wiped out by the change of 300,000 out of 14,000,000 votes. In the elections of 1924, two million voters brought about a great Conservative victory, while the Labour Party lost 49 seats despite the fact that it polled more than a million more votes than in the election of 1923. In view of the results of the majority system of voting, supporters of the Liberal Party in England have demanded the adoption of some form of proportional representation. Since it sees a possibility of securing a majority, the Labour Party does not appear to be enthusiastic about this reform. Cf. Herman Finer, *The Case Against Proportional Representation*, Fabian Tract No. 211, May, 1924.

as the Conservatives, because its short tenure in office had led it to believe that it could accomplish little as long as its life depended upon Liberal support. Hence its policy in the election was not so much to defeat Conservative candidates as to kill off Liberals, in the hope eventually of presenting a single opposition front. Whatever the outcome of this policy may be, it appears that England is attached to a two-party system and desires that some one party shall command a majority in Parliament.

Parties in Modern Government

Experience has shown that democracy in a great country, where the number of voters is necessarily large, involves the existence of political parties; and it would not be hard to demonstrate that this must in the nature of things be the case.

But if political parties have become well-nigh universal at the present time, they are comparatively new in their modern form. No one in the eighteenth century foresaw party government as it exists to-day, enfolding the whole surface of public life in its constant ebb and flow. The expression, "His Majesty's Opposition," said to have been coined by John Cam Hobhouse before the Reform Bill,[1] would not have been understood at an earlier period; and it embodies the greatest contribution of the nineteenth century to the art of government — that of a party out of power which is recognized as perfectly loyal to the institutions of the state, and ready at any moment to come into office without a shock to the political traditions of the nation.

[1] Cf. Review of his unpublished "Recollections of a Long Life," in the *Edinburgh Review*, April, 1871, p. 301.

Party and the Parliamentary System

In England the party system is no more in accord with the strictly legal institutions, with King, Lords and Commons, than it is elsewhere; but it is in absolute harmony with those conventions, which, although quite unknown to the law, make up the actual working constitution of the state. It is in harmony with them because they were created by the warfare of parties, were evolved out of party life. They are based upon party, and by the law of their nature tend to accentuate party. Ministers perceived that their security depended upon standing together, presenting a united front, and prevailing upon their friends to do the same. The leaders of the Opposition learned also that their chance of attaining to power was improved by pursuing a similar course. In this way, two parties are arrayed against one another continually, while every member of Parliament finds himself powerfully drawn to enlist under one banner or the other, and follow it on all occasions. He cannot consider measures simply on their merits, but must take into account the ultimate effect of his vote. As soon as men recognize that the defeat of a government bill means a change of ministry, the pressure is great to sacrifice personal opinions on that bill to the greater principles for which the party stands; and the more fully the system develops, the clearer becomes the incompatibility between voting as the member of Parliament pleases on particular measures, and maintaining in power the party he approves. In short, the action of the House of Commons has tended to become more and more party action, with the ministers, as we have already seen, gradually drawing the initiative in legislation, and the control over procedure, more and more into their own hands. In fact, so far as Parliament is

concerned, the machinery of party and of government are not merely in accord; they are one and the same thing. The party cabal has become the Treasury Bench. The ministers are the party chiefs, selected not artificially but by natural prominence, and the majority in the House of Commons, which legislates, appropriates money, supervises and controls the administration, and sustains or discards ministers, is the party itself acting under the guidance of those chiefs. The parliamentary system, as it has grown up spontaneously in England, is in its origin and nature government by party, sanctioned and refined by custom.

Party Votes in Parliament

Since the cabinet may be overturned at any moment, so that its very life depends upon incessant warfare, it must try to keep its followers constantly in hand; and since every defeat, however trivial, even if not fatal, is damaging, it must try to prevent any hostile votes — an effort which explains in part the much larger average attendance at divisions to-day than in the first half of the last century. Thus from the side both of the private member and of the responsible minister there is a pressure in the parliamentary system towards more strict party voting. A democracy prefers broad contrasts, sharply defined alternatives, clearly marked issues, and the frank opposition of party leaders. It understands better the struggle between the two front benches than the particular bearing of the measures debated. Unless matters of local interest are involved — and these the English practice almost eliminates — a democracy is prone to support the party, with comparatively little regard for matters of detail.

In Parliament contentious legislation is in ordinary times conducted in the main by one party and opposed by the

other, and hence the proportion of party votes is nearly constant. In Congress this is by no means true, and the number of such votes depends largely upon the presence of some question on which the parties happen to be sharply divided. On other subjects party lines are less strictly drawn. In short, in England the parties frame the issues; in America at the present day the issues do not, indeed, make the parties, but determine the extent of their opposition to each other in matters of legislation. In general, the statistics for Congress show that whereas during the middle of the last century the amount of party voting there was at least as great as in Parliament, and while in particular sessions the English maximum has been exceeded, yet on the average, party lines are now drawn distinctly less often than in the House of Commons.[1]

It is often said that in State legislatures the boss, or the caucus, dictates the action of the party on pending measures, and then carries it into effect by a party vote, so that legislation is really the work of the machine. That this is an error is proved by the statistics. It is not true, because in the first place the machine rarely controls more than a part of the members of the party, and in the second place the machine meddles little with general legislation. It knows that an attempt to dictate to its followers on such questions would only weaken its authority; and hence it confines its attention to the distribution of spoils, to laws that bear upon electoral machinery, and to such bills, public or private, as affect directly the persons from whom it draws its revenue. It has, indeed, been pointed out that the very position of the boss depends upon the fact that parties exist

[1] For an elaborate collection of statistics, see the writer's tables in the *Report of the American Historical Association* for 1901, and for a brief summary, his *Government of England*, ii. 72–92.

for public objects, while he exists for private ones;[1] and this is so well recognized that great corporations desiring to obtain either selfish legislation, or protection against unscrupulous attack, have subscribed impartially to the campaign funds of both political parties. That is the aspect of public life which provokes an outcry from reformers. Parties in America are not, as a rule, despotic on public questions, because they have little cohesion; but their influence, or rather the influence of the machine, or of the individual politician, is freely exerted in things quite apart from those issues of public policy which form the only rational ground for party activity. In short, the boss is not a prime minister who directs policy, but an electioneering agent and a private bill and office broker.

A comparison of England and America shows, therefore, that the influence of party upon legislation is, on the whole, much greater in England, but that it is more closely confined to public measures.

[1] "The American Boss," by Judge Francis C. Lowell, in the *Atlantic Monthly*, September, 1900.

CHAPTER IV

ENGLAND: LOCAL GOVERNMENT

The Areas of Local Government

THE whole country is divided into counties [1] and county boroughs, the larger towns being for administrative purposes counties by themselves.[2] Each of these is governed by a single body called the council, composed of representatives chosen by electoral divisions, and of additional members, called aldermen, chosen by the council itself. The details are slightly different in the counties and county boroughs, but the general principles are the same; and in the latter the county powers are simply vested in the same council that governs the borough in other respects.

The county is subdivided into boroughs and urban and rural districts, each of which is governed by a council

[1] This is properly called the administrative county to distinguish it from the ancient county or county at large, from which it differs by the exclusion of the county boroughs, and by the changes in boundaries made in consequence of the Acts of 1888 and 1894. The county at large still exists for elections to Parliament, and in some cases for judicial purposes and for the militia, although as a general rule these last two matters follow the changes made in the administrative county. (51–52 Vic., c. 41, § 59.) There are in England and Wales only fifty-two counties at large, but in consequence of divisions for purposes of local government there are sixty-two administrative counties, only half a dozen of which now coincide in area with the counties at large.

[2] This privilege was intended for boroughs which had, or should thereafter attain, a population of 50,000, although some smaller places were included in the list because they were already counties by themselves. (51–52 Vic., c. 41, §§ 31, 54, and Sched. 3; cf. Wright and Hobhouse, *Local Government*, 2d ed., pp. 24–26.)

formed on the same plan as a county council, save that in the district councils there are no additional members, or aldermen, elected by the council itself.[1] The functions of these councils differ very much, those of the boroughs being the most, and those of the rural districts the least, extensive. For that very reason the boroughs and urban districts, and of course the county boroughs, — although usually divided into wards for electoral purposes, — can hardly be said to be subdivided for local government, the powers of urban parishes being insignificant. The rural districts, on the other hand, are divided into parishes, which possess real functions, and were intended, at least, to take an active part in local administration; those with more than three hundred inhabitants having elected councils, and the rest transacting their business in mass meeting.[2]

The metropolis does not fall into this system of local government, but is organized on a plan of its own. The City of London, with its ancient limits, retains its old institutions, independently of the vast town that has grown up around it; while the rest of the metropolitan area is under a county council, created at the same time, and on the same general pattern, as other county councils. The territory over which it rules was divided in 1899 into boroughs, with councils to which the powers of the former parish vestries have been transferred;[3] and thus London is treated as a borough of the second degree.

[1] 56–57 Vic., c. 73, §§ 23–24.

[2] In the past there have been many kinds of parishes (Odgers, pp. 44–48; Wright and Hobhouse, pp. 1–8; Redlich and Hirst, *Local Government*, ii. 161–170), but now there are only two of any real importance, the poor-law or civil, and the ecclesiastical, parish. By two distinct series of acts the parishes of both kinds have been so changed that in most cases the ecclesiastical no longer coincides with the civil parish. The former is under its own vestry and churchwardens, who have now no civil powers.

[3] 62–63 Vic., c. 14.

Cutting athwart this checkerboard of local areas the only important cross division remaining, that of the poor-law unions, covers the whole country with another network of lines. The members of the board which rules the union are still called guardians, and in the urban parts of a union they are separately elected, while in the rural parts they are simply the members of the rural district council elected there.

Described in this way the scheme of English local government may not seem complex, but in fact it is less simple than it appears, because there are in many places divers peculiarities and exceptions, under ancient local customs and special local acts, which mar the symmetry of the plan.

Borough Councils

All the larger boroughs, and many of the smaller ones, are divided into wards, among which the seats in the council are apportioned.[1] As a rule — although by no means an invariable one — each ward is represented by three councillors; and since they serve for three years, one of them retiring each year, the voters in a ward are usually called upon to elect only a single representative at the annual election. As in the case of Parliament, no poll is held unless more candidates are nominated than there are seats to be filled, and hence an opponent does not come forward unless he means to conduct a serious fight. The result is that in many a ward there is no contest, especially when the sitting member is ready to stand again. The number of uncontested seats varies, of course, a great deal. In one hundred and three boroughs and urban districts, large and small, taken

[1] The division into wards is based upon local taxation as well as population, and thus a certain weight is given to property. 45–46 Vic., c. 50, § 30 (10). For the relations of population and property in the wards of Glasgow, see Bell and Paton, *Glasgow*, p. 63.

at random at the elections of 1899, decidedly less than half the seats in the aggregate were contested, while in thirteen of these places there was not a single contest.

The borough council is not composed of representative members alone. It consists of the mayor, aldermen, and councillors sitting together as a single body. The aldermen are in number one third as many as the councillors; but although selected in a different way, and holding office for a different term, they are from a legal point of view simply members of the council like the rest. They are chosen for six years instead of three, one half of them going out every third year. They are elected by the council itself on November 9, that is immediately after one third of the council has been renewed by the popular election of that year.[1]

While the aldermen have no important legal powers not enjoyed by the other members of the council, their influence is much greater, for they are the members who have served longest, and they hold most of the chairmanships upon the committees. In some towns, indeed, these posts are reserved exclusively for them, and everywhere one is struck by the fact that they are, on the whole, the leading figures in the council. The influence naturally conceded in a body of this kind to seniority and experience is enhanced in an English borough council by the fact that as a general rule, apart from a change of party in the council, retiring aldermen are reëlected so long as they are willing to serve.[2]

[1] Formerly, the aldermen voted in the election of aldermen, and this gave them in some cases a power to retain the majority of the council in the hands of their own political party after the majority of popularly chosen councillors had passed to the other party. In 1910 their right to vote for aldermen was taken away by statute. (10 Edw. VII and 1 Geo. V, c. 19.)

[2] It is not an invariable rule. In Carlisle and Oldham, for example, an alderman is not reëlected, on the principle that after serving his term of six years he ought to go back to his constituents for approval. But this is not considered by most observers to work well.

This may not be in accord with the strict theory of representative government, but it has substantial advantages. It insures the presence in the governing body of men of long experience; and in fact it is not uncommon to find in a town council a few men who have served there continuously for twenty-five or thirty years, or even more.

The Mayor

The first business of the council at the meeting on the ninth of November is the election of a mayor, for the term of one year, from among the aldermen, councillors, or persons qualified to be such. The mayor is a justice of the peace for the borough during his term of office, and for one year thereafter; but this is the only duty of importance that he performs apart from the council, of which he is both a member and the chairman.

The Permanent Officials

Behind the council and its committees, little seen by the public, but carrying the main burden of the public work, stand the permanent officials. When a vacancy occurs in the position of a town clerk or borough surveyor, for example, it is the general, although not invariable, habit to advertise for a successor; and this is sometimes done even in cases where the councillors have really made up their minds to promote a subordinate already in the service of the borough. If a promotion of that kind is not made, and a clerk, engineer, or other officer is appointed from outside, a man is usually selected who is employed in a similar public office elsewhere — either at the head of a department in a smaller place, or as a subordinate in a larger one. In this way municipal service tends to become a career by itself. A town clerk, for example, must always be a solicitor or

barrister by profession, and occasionally a person in private practice is selected, but it is far more common to take a man who is already engaged in municipal work, and has therefore had experience in the particular class of duties he is called upon to perform. In short, a town clerk usually enters the public service as a young man in a subordinate capacity, often as an articled clerk in a town clerk's office, and works his way up. It is rare that a solicitor is put into one of the higher posts in a borough from private life, and rarer still that a town clerk, or one of his assistants, goes back into private practice. The same thing is true of the engineers. It is not common to appoint a borough engineer on account of his reputation in general practice; or for a man who has seen service as an engineer of a town to go back into any other kind of work. In short, municipal engineering tends to become a distinct profession. The officials abstain wholly from party politics, and although party motives may have affected the choice of a man, they never lead to his discharge if the majority in the council happens to change. In short, there are no spoils, or rather nothing of the practice that renders spoils a blight — that is, the removal of officeholders to make room for partisans. So long as an English borough official does his work well, he is retained regardless of party.

Their Position

It is often said that the council determines the general policy to be pursued, while the officials carry it out in detail,[1] and this describes, no doubt, the legal situation, but

[1] Redlich and Hirst (*Local Government in England*, i. 350–351), who have dwelt upon the importance of the officials more than any one else, repeat this statement in a slightly different form; and although they point out that it is not accurate, they seem to regard it as more nearly so than it appears to the writer.

it is very far from expressing the actual influence of the officials upon the administration of the borough. In the first place no sharp line can be drawn between policy and details; and then an official who has in any degree the confidence of his committee will always influence them very largely about the general policy of his department. His position is like that of a permanent undersecretary of state. The members of the council, like the ministers, assume the responsibility for what is done. They are expected to shield the official from blame, and naturally take the credit for good management. He enjoys, therefore, with a large share of real power, freedom from attack, and a permanent tenure of office in consideration of self-effacement. It is not inaccurate to say that in general the chairman of a committee plays a part not unlike that of a minister, with the official as his permanent undersecretary. The official impresses his views on the chairman, who in turn impresses them on the committee, and this body carries them through the council. Thus the motive force behind the council is to be found mainly in the permanent officials, whose power, being unseen, is little understood by the public. In fact the writer, after studying a number of English cities, was led to believe that the excellence of municipal government was very roughly proportional to the influence of the permanent officials. That influence, be it observed, is by no means confined to matters where purely expert knowledge is required. A very small fraction of the time of a town clerk is devoted to questions of law, or of a surveyor to engineering problems. By far the greater part of their work is administrative, and it is not too much to say that the administration of a typical English borough is conducted by the officials.

Benefits of their Influence

The merits of English municipal government have been commonly attributed to the concentration of power in the hands of the council, but in its essence the system is virtually that of management by committees; and such a system, by its very nature removed in details from public observation, is singularly open to abuse. There is probably no method of government that in bad hands lends itself more readily to inefficiency and corruption than administration by committees, and none that is less sensitive to healthy criticism. But it works very well where, as in the English borough councils, the committee acts under the guidance of upright and capable experts. Under these circumstances the officials, who really administer the city, find support, protection, and permanence of tenure; while at the same time they are prevented from becoming bureaucratic, and are kept in touch with public opinion.

CHAPTER V

ENGLAND: THE EMPIRE

The British Empire

THE dependencies of England are scattered over the whole face of the earth in almost every habitable latitude, while there are scarcely ten consecutive degrees of longitude in which she does not have a foothold. Her four most important possessions lie in as many different continents with no means of reaching them but a long sea voyage. Outside of the British Isles, with their hundred and twenty thousand square miles, she holds no land in Europe of other than a military significance; but she has nearly four millions of square miles in North America, as much more in Africa,[1] over three millions in Australasia, and nearly two millions in Asia, besides innumerable islands and small bits of coast dotting the map of the world.[2]

Proportion of Races

The population of the empire is as diverse as its geography.[3] Only a small fraction of it is of European origin, and that fraction is far smaller than it was a hundred and fifty years ago, for by the annexation of huge territories the number of Asiatics and Africans under British rule has been multiplied enormously, while the people of European race in the dependencies are only about four times as many

[1] Including Egypt and the Sudan; but not including the captured German colonies.

[2] Cf. *Oxford Survey of the British Empire* (1914), 6 vols.; *Dominions and Dependencies of the British Empire* (1924), in the British Empire Series.

[3] Sir Godfrey Lagden, *Native Races of the Empire.*

as they were at that time. In fact, the ratio of the people of European stock in the rest of the empire to those in the British Isles is little, if any, larger than it was in 1775. The revolt of the American colonies did not, as some people believed at the time, prevent England from building up a great empire, but it has so far prevented that empire from being in large part Anglo-Saxon. The British Empire contains a total population of about four hundred and fifty millions; of which the people of European descent number about sixty-five millions; the natives of India over three hundred millions; the rest being Chinese, Singalese, Malays, Africans and aboriginal races of various kinds.

Distribution of the European Elements

Of the sixty-five millions of people of European stock, over forty-seven millions live in the British Isles, and about eighteen millions elsewhere. Nor are these last gaining at such a rate of speed as to make it probable that they will soon overtake the mother country. Moreover, the eighteen millions outside of Europe are by no means wholly of British extraction. Apart from streams of foreign immigrants who will soon become intermingled with and assimilated by the people among whom they live, there are certain old stocks, original settlers or ancient inhabitants, like the French Canadians, the Cape Dutch, and the Maltese, who have not lost their language or their traditions. They number some three millions, leaving not much more than fifteen millions of English-speaking subjects outside the British Isles.

Revenue

Unlike the outlying portions of most of the great empires in the past, the dependencies of England are not tributaries. Normally each of them, whether self-governing or not, is

self-supporting. It contributes nothing to the imperial treasury, and the mother country defrays no part of the cost of its administration. India, for example, maintains the British troops stationed there, and pays both the salaries of British officials in her service and their retiring pensions after they leave; but although this may be an advantage to England, the money is spent solely on the government of India and in principle at least for her benefit. In time of peace, no more troops are, in fact, kept at the expense of the country than are deemed to be needed for its defense and for the preservation of order. Occasionally England advances money to one of the colonies to be repaid later, but she never extorts a loan from them.

Of late years the self-governing dominions have, indeed, undertaken to maintain ships of war, but they are designed chiefly for the protection of their own coasts, and are insignificant in comparison with the cost of the British navy.

So far from regulating trade during the last half century for her own benefit, England in granting self-government to her larger white colonies allowed them to raise their revenues as they saw fit, and they have set up protective tariffs against her manufactures. Recently they have, indeed, given a preference in rates to English goods, although sometimes merely by raising their duties still more against other nations. The profit that England derives from her dependencies does not come in the form of tribute, but of enlarged opportunities for her citizens. Much discussion has taken place on the question whether trade follows the flag, but whether it does so directly or not, there can be little doubt that the control of an immense empire has had an indirect effect in the past.

Forms of Colonial Government

In a book so small as this it is impossible to give a description of the multifarious forms of government in the British dependencies.[1] It is enough to point out certain salient traits and the more important methods of administration. There are three distinct types of government: those of the self-governing dominions, the crown colonies with a greater or less amount of popular representation, and what, for want of a better generic term, may be called the protectorates, that is, the states that are ruled more or less completely by Great Britain through the form of advice to the native rulers. To some extent the line between these categories is vague; and it is not wholly the official classification, because some of the dependencies are not under the Colonial Office. India, for example, being in charge of the India Office, is not called a colony, yet until the last few years the administration was essentially similar to that of a crown colony so far as the relation to England is concerned, and it still resembles that of such a colony with limited representative features. Moreover, some protectorates are controlled by the Foreign Office; but if we disregard the question with which corner of the great building on Downing Street dependencies have their relations, and look only to the actual form of government, we find that they fall generally under one or other of these three heads.

A new designation, often used for the Empire, that of British Commonwealth of Nations, implies a change that has taken place in the attitude toward the mother country. The World War, with the vast common effort it involved,

[1] Cf. Arthur Berriedale Keith, *The Constitution, Laws and Administration of the British Empire.*

fostered among the colonials of British descent a spirit of attachment to the Empire; but at the same time, fought as it was to combat German ideas of subjecting weaker nationalities, it promoted, among the English-speaking and other races, two principles not wholly in harmony with imperial cohesion. One of these was the right of self-government by all peoples; the other, the national independence of distinct communities. Both of these have left their marks upon the Empire, and in tracing their effects it is well to begin with those portions of the fabric which have been least affected, — that is, with those in which the control of the parent state is the greatest, — and end with those in which self-government is the most developed.

The Crown Colonies

Among the colonies of this class there are some in which there is no legislative council whatever, and the administration is wholly in the hands of a military or civil governor. That is true of purely military or naval stations, like Gibraltar and St. Helena, and of half-explored tracts in the interior of Africa. Then there are a dozen or more colonies and protectorates where the legislative council is wholly appointed by the Crown. This is the case where the European inhabitants are few and the natives are not deemed to be advanced enough to take part in the government, as in many of the British possessions in the West Indies, in Central America and in some other tropical regions.

A third class of crown colony is that in which the council contains a minority of elected members with a majority which is, or in case of need may be, appointed by the Governor or the Crown. Where the population contains any considerable number of Europeans, or other educated people, such a plan has the advantage of bringing the

Governor and his advisers into official contact with a local opinion that, in the absence of violent dissensions, is likely to have great weight; and yet it avoids the danger of those controversies and deadlocks between the Governor and an elected legislature which have in the past been a source of trouble in British colonies, and to which we shall refer later. This form is, or was recently, in use, for example, in the Leeward Islands, Guiana, Mauritius, Fiji, and now we must add Nigeria, the Gold Coast, and Sierra Leone, with Ceylon and the Straits Settlements coming, perhaps, into the same class.

Finally, there are three islands which still retain an old type of government, and are not properly classed as crown colonies, for they have assemblies wholly elected, to which the ministers of the Governor are, however, not responsible. They are Bermuda, Bahamas, and Barbadoes, the first and last having the oldest representative bodies in the British Empire, except the House of Commons. The peculiar conditions in these islands, which have made possible the survival of institutions that have perished elsewhere, need not be examined here. Suffice it to say that they are peculiar, although not the same in all cases.

As a result of the desire for self-government produced by the war, some colonies that elected no members to the legislative council have been granted them; and Malta has been given a position between that of a crown colony and a self-governing dominion. For this island, an important naval base, various forms of government have been tried, none of them so far satisfactory for long. In 1921 a principle was adopted, of which we shall hear more in the case of India under the name of dyarchy. It consists of dividing public business into two spheres, one subject to the control of the elected legislature, and the other reserved for the Governor

and the Crown; the former, in the case of Malta, comprising local, and the latter imperial, affairs.

The Protectorates

The war and its consequences have also greatly affected the British protectorates. Some have been added, and others have undergone change. Although Egypt, for example, was in fact under full British control, a protectorate was not formally declared until the war. After it was over a revolt was followed by a recognition of autonomy, with certain reservations; but the relations of the two countries have not yet been settled, and what they will ultimately be is uncertain. This is hardly less true of Palestine and Mesopotamia; and, indeed, any description to-day of the chief British protectorates might prove to be untrue to-morrow, save, perhaps, in the case of the native princes of India.

India

Until recent changes in the destiny of peoples, the Governor-General, or Viceroy, of India and the Czar of Russia were sometimes said to be the two great autocrats of the modern world; for although subject to the control of the Council of India in London, with a Secretary of State at its head, the administration of the country, and in the main the policy pursued, was determined in the Viceroy's office.[1] But, except in the case of a man of rare capacity and force, an autocrat, especially if, like the Viceroy, he comes for a few years to a strange land, must be largely under the influence of advisers who are thoroughly familiar with the work to be done, and belong to a great organization with a strong *esprit de corps*. The Governors of Bombay and

[1] For the system in force before the late changes, cf. Ilbert, *The Government of India*.

Madras, like the Viceroy himself, were British noblemen appointed by the Crown; but they were subject to the Viceroy's orders, their legislative power was limited, and all laws made by them required his consent. Hence their authority was not very great, and they, too, were surrounded by members of the civil service; while the lieutenant governors, or chief commissioners, at the head of the other provinces, were appointed by the Viceroy from that service, for which, indeed, by far the greater part of the administrative and judicial posts of higher grade were reserved. Thus the government of India was really in the hands of about eleven hundred Englishmen, of whom a couple of hundred were military officers, or belonged to special services, and all the rest were members of the great corps of the civil service. Such a body of men, drawn for the most part from one source, educated in the English universities,[1] spending their vigorous years in a common and highly responsible work in an oriental land, were well fitted to develop traditions without bureaucratic rigidity. They did not conceive of their mission as ruling India for the benefit of England; and, in fact, without recognizing any conflict of interest between the two, their first care was the welfare of India as they understood it.

First Steps toward Self-Government

But the rule of strangers, however good, is a very different thing from self-government, and the political ideas of European peoples, more especially of the English themselves, gradually awoke the aspiration of the Hindoos. The Indian Councils Act of 1892, or rather the regulations made thereunder, introduced a trace of representation, by pro-

[1] For the method of recruiting the service, cf. Lowell and Stephens, *Colonial Civil Service*.

viding that part of the members of the chief provincial legislative councils should be nominated by various local bodies. This gave a chance for native opinion to be heard, but conferred little actual power. The principle was extended by the Morley-Minto reforms of 1909, which gave to the native members a majority in the provincial councils, increased their deliberative and financial authority, and introduced elected members into the legislative council of the Viceroy. Still the powers of these councils were mainly advisory, and the executive was by no means responsible thereto.

An agitation for self-government became more and more pronounced, and this, with the loyalty of India during the war, and the danger that might result from lack of concession, caused the British cabinet to take a conciliatory attitude. On August 20, 1917, it made the momentous statement that its policy would be to provide for "the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in British India as an integral part of the Empire." It was a promise of an ultimate status like that of the self-governing dominions, and of steps toward it at the close of the war. On that principle India was admitted a member of the League of Nations on a par with the dominions, and although for the time her vote is cast by a representative who is under the control of the British government, the justification is the professed intention of autonomy.

The Dyarchy

The task of preparing a people for self-government is a ticklish one, and the method adopted in India has been called dyarchy, or, in plain English, that of dividing the

functions of government into two classes, one placed in the hands of popularly elected representatives, and the other reserved for the British officials. This plan was proposed in the Montague-Chelmsford report, and given effect by the Government of India Act of 1919.[1] To carry it out, there was made a two-fold division of subjects: first between those to be dealt with by the central government with the Viceroy at its head, and those delegated to the provinces; and second, between the provincial subjects "reserved" for the Governor with his official council, and those "transferred" to the representatives of the electorate. The principal central subjects are: the army and navy, relations with other countries and the native states, railways and waterways, shipping, commerce, money and banking, posts, telegraphs and telephones, migration, customs and income tax, civil and criminal law — a list somewhat wider than that conferred upon the national government of the United States, but, except for the last item, not very different in character. The chief provincial "reserved" subjects are: water supply with irrigation and canals, famine relief, justice and the organization of courts, factories and labor, elections, police and prisons, control of the press, control of public services, taxes and loans, land revenue and land tenure. The provincial "transferred" subjects include the regulation of local government, hospitals and public health, primary and secondary education, public works, agriculture and fisheries, alcohol and drugs other than opium, and the development of industries. The brief lists given here are neither exhaustive nor exact; moreover in many cases the central government may enact general rules

[1] 9 and 10 Geo. V, ch. 101, and Draft Rules 1919. Cd. 891. For a discussion of the Act, cf. Sir Courtenay Ilbert and Lord Meston, *The New Constitution of India*.

that affect them; but they suffice to give an impression of the method of division, and to indicate that those matters which are most likely to be important in causing or controlling public agitation are centralized or reserved.

The object of dyarchy was to train the people of India gradually in the exercise of authority and in a sense of responsibility therefor. To accomplish this, legislative councils have been created by the Act in the nine chief provinces, each with a majority of at least 70 per cent of members elected by different categories of citizens on a limited franchise. Subject to qualifications to be mentioned in a moment, all laws on both reserved and transferred subjects are enacted by the council, and in the case of the transferred subjects it is also given a control over their formulation and execution modelled upon that exercised by the House of Commons in England.

This brings us to the composition of the Governor's body of advisers and administrators, wherein the essential principle of dyarchy lies. For the reserved subjects the Governor has a small executive council (half native Indians) appointed by the Crown without regard to the legislative council. For the transferred subjects he has ministers selected by him from the members of the legislative council, who are intended to be responsible to that body. In order, however, to avoid a stoppage of the governmental machine by deadlock, the Governor is given certain extraordinary powers. In the case of the reserved powers, he can enact a law or make an appropriation, which the legislative council refuses to pass, by certifying that it is essential to his responsibility on the subject; and on a transferred subject, he can veto a bill, and in cases of emergency can even make an appropriation which in his opinion is necessary for the safety of the province or for carrying on its administration.

In the central government there is no dyarchy, — that is, no division of subjects into reserved and transferred, — and hence the Viceroy has only an executive council, and no ministers like those in the provinces. But a central legislature has been created, with two chambers called the Council of State and the Legislative Assembly. Each of these bodies has a majority of elected members, that in the Assembly being 104 out of 144; the electorate for the Council of State having a higher property qualification. Normally all laws are enacted, and all financial measures voted, by this bicameral legislature, except appropriations for interest on the public debt, the salaries of persons appointed by the Crown, and expenditures ecclesiastical, political, and military. But the Viceroy is given extraordinary powers, similar to those of a governor in regard to the reserved subjects in a province.

As yet the experience with the new constitution of India has been too brief for a definite conclusion about its results. It has not worked perfectly smoothly, but no transitional condition ever does. One object of the dyarchy has not so far been attained, that of learning by practice the relation of responsible ministers to a popular legislature; for it can come rapidly only in case that body is divided into parties or groups which sustain or oppose the ministry, and almost all of the provincial legislative councils are not so divided. In the absence of such a grouping the bulk of the members are likely to be either submissive to the foreign governor, or hostile to him, and this last seems to be the tendency in both the provincial and the central legislatures. To a people whose leaders desire self-government an offer to confer it on them gradually is certain not to be satisfactory. However unprepared they may be for its exercise, they will not believe it. A child shown something that he

wants, and told that he will have it when he is fit to use it, will not be pleased. He wants it at once. That seems to be the natural state of mind of the political leaders in India. Barring some catastrophe, Great Britain can hardly retrace its steps. How it will go forward is a very interesting matter; and on the wisdom of its course will depend the future attitude toward it, political and economic, of this vast population.

The Native States

The whole of India is not under direct British administration. Scattered all over the peninsula are tracts of country under native rulers, although subject to the overlordship of the English crown. Lee-Warner styles the relation one of subordinate union, and certainly it is very far from an international connection between sovereign states, because the government of India exercises in several ways a paramount authority, not only for its own security, but also for the protection of the native ruler's own subjects. Speaking generally, the native states are protected against both external foes and rebellion at home, and, on the other hand, their diplomatic intercourse with one another and with foreign powers is in the hands of the Indian government. They have military obligations, also, which vary a good deal according to the special treaties made with them. Quite apart from military necessities, moreover, they must permit the construction of roads, railways, telegraphs, and irrigation works within their limits. The instrument through which the control of the native states is carried on is the resident, whom the prince is bound to receive, and to whose advice he must listen. He need not always follow it, but the admonitions of the resident count for much in the long run. By pressure of this kind, and by intervention in flagrant cases, the bands of thugs, and barbarous

customs like infanticide and suttee, have been abolished in the native states, which have indeed tended in many ways to follow at a distance the example of British India.

The only change made by the new organization of India in the position of the native states is the creation of the Chamber of Princes for the discussion of matters of common interest to these states. It has, of course, no authority, but, as a means of accord with each other and the central government on the part of the rulers of one third of India, it may not be without influence on the future of the country.

The Self-Governing Dominions

Before the eighteenth century was far advanced, a single type of government had become prevalent in most of the important British colonies, both on the mainland of North America and in the West Indies. It was that of a governor appointed by the crown, and a legislature with a popular branch elected by the inhabitants of the colony and possessing the power of the purse. For any people with English political traditions that was the natural form to adopt. It is the type followed by the United States for the government of her territories. As a temporary expedient, while a territory is too thinly settled to be admitted to statehood, the plan has worked well in the American republic; but as a permanent system in a community mature enough to have a will of its own the plan has grave defects. It involves dissensions between the ruling powers, with no arbiter to whom both feel bound to submit; and in fact the history of the British colonies in the eighteenth century is full of bickerings between the governor and the legislature.[1] These disputes harrowed the ground in which the seeds of the American Revolution were planted.

[1] Cf. Greene, *The Provincial Governor;* Egerton, *Short History of British Colonial Policy.*

This first serious attempt to study the effects of this form of colonial government was made after the Canadian Rebellion of 1837. Lord Durham was sent out as High Commissioner, and in his famous report he pointed out the evils of the plan, suggesting as a remedy that the governor of each province should entrust the administration to such men as could command a majority in the Assembly, and thus establish ministerial responsibility on the English pattern.

A decade later, his suggestion was carried out by Lord Elgin, who became Governor of Canada in 1847; and within ten years it was applied to the principal Australian colonies also. In fact it has been extended to every British colony as soon as it contained a sufficiently large population of European stock.

Colonial Federations

A sequel to the grant of responsible ministries has been the formation of confederations in the three great groups of self-governing colonies. In each case the initiative has come from the colonies themselves, the action of the mother country being almost entirely confined to embodying in an Act of Parliament the plans already agreed upon by them. The British North American Act of 1867[1] brought together in the Dominion of Canada the provinces of Ontario, Quebec, Nova Scotia, and New Brunswick; and later all the other habitable parts of British North America joined the union, except Newfoundland and its dependency Labrador. A generation afterward all the Australasian colonies, except New Zealand, were brought together by the Commonwealth of Australia Act of 1900;[2] and finally the South African colonies were united under a federal constitution in 1909.[3] These federations differ a good deal in details, but each of them has a federal ministry responsible to a

[1] 30–31 Vic., c. 3. [2] 63–64 Vic., c. 12. [3] 9 Edw. VII, c. 9.

federal parliament, and provincial ministries responsible to assemblies for the province or state.

One is aided in remembering the self-governing dominions by bearing in mind that they consist of three large federations, and their three smaller neighbors — Canada and Newfoundland; Australia and New Zealand; South Africa and Rhodesia.[1] To these is now added a seventh, the Irish Free State.

Ireland

The history of the government of Ireland has been a long and unhappy one. For our purpose it is needless to go farther back than the Home Rule Act of 1914, which was not put into effect on account of the resistance of Ulster and the outbreak of the great war. After the peace of Versailles, Parliament passed the Act of 1920, dividing the country into Northern and Southern Ireland, each to have a parliament with limited powers. This the Irish leaders would not accept, and guerilla warfare continued between them and the British "Black and Tan" troops until, in December, 1921, a treaty was made giving to the Irish Free State the autonomy of a self-governing dominion.[2] It was not

[1] On the expiration of the charter of the South African Company the white inhabitants of Rhodesia were given the option of joining the Union of South Africa or having a responsible government of their own. They chose the latter, which was granted by Letters Patent in September, 1923, and their condition is like that of a dominion, save that they cannot encroach on the native reserves, and appointments in the native department, or discriminatory treatment, require the approval of the High Commissioner for South Africa. Cf. Statutory Rules and Orders, 1923, p. 1078.

[2] In July, 1924, the Free State registered this agreement with the Secretariat of the League of Nations as a treaty with Great Britain, which evoked a protest from the latter on the ground that it was not a treaty with a foreign nation, but governed "the relations *inter se* of the various parts of the British Commonwealth." The position of Ulster is anomalous. It remains under the provisions of the Act of 1920, which gives it large, but not complete, powers of self-government, and it retains its representatives at Westminster.

universally approved, but after more fighting, the soldiers of the Free State suppressed their opponents, who struggled for a wholly independent republic. A constitution was adopted, and ratified by Parliament, which contains some interesting provisions, among them a distinction between ministers who are collectively responsible to the Dáil, and others who are heads of departments and individually responsible to it therefor. But the matter that concerns us here is the relation to Great Britain. Except for provisions limiting military forces, reserving to the British navy the use of harbors, and forbidding religious endowment, restriction or discrimination, the treaty declared that "the position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise shall be that of the Dominion of Canada, and the law, practice and constitutional usage governing the relationship of the Crown or the representative of the Crown and of the Imperial Parliament to the Dominion of Canada shall govern their relationship to the Irish Free State."

England and the Dominions

The organization and internal government of the dominions do not fall within the scope of this book; but it may be observed that the formation of the colonial federations has not been without effect on their relation to the mother country. Instead of dealing with a dozen and a half communities, many of them very small, she deals mainly with three large federations and the Irish Free State. She comes in contact with national instead of provincial opinion — the more national by reason of the sentiments resulting from the war — and this of itself tends to lessen the part she plays in their affairs. Legally, if we use the word in the usual English sense, the King and Parliament of Great

Britain have sovereign authority over the whole Empire. Practically that authority is not, and cannot be, exerted to any considerable extent in the dominions. In each of them there is a royal governor whose assent is necessary to legislation, and he may withhold it or reserve the law for assent by the crown. These rights he exercises in the crown colonies, but in the dominions he never vetoes legislation himself, and very rarely reserves a bill. In fact, it may be observed that the extent to which his power is used is inversely proportional to the size of the dominion. In their domestic affairs the larger dominions are virtually independent. Parliament never legislates for them without their request, and the British government does not interfere with their administration, even if such affairs touch the interests of other parts of the Empire, for the dominions have power to impose protective duties on imports from Great Britain, and habitually do so. They have, indeed, granted preferences to English goods, but often only in the form of increasing the tariff against other nations; and South Africa is now considering a general policy of reciprocity tariffs with all other countries. Another matter that affects the whole Empire is the exclusion of natives of India, although British subjects, a policy which exasperates the people of that country and has caused no little embarrassment to the government in England.

Foreign Relations

While the larger dominions have become virtually autonomous in their domestic affairs, it had been assumed until the last few years that as regards foreign nations the Empire was a single power conducted by the British government. Even before the war, however, representatives of the dominions had been appointed British delegates at

international conferences on special subjects; commercial treaties made by Great Britain had contained a clause permitting the dominions to adhere or not as they pleased; and treaties of commerce had been negotiated on behalf of Canada alone by her representative, and signed by him in conjunction with the British Ambassador. After the dominions had sent large forces to the great war, they desired to have a larger share in foreign affairs. A feeling arose among them that they ought to have more influence on war and peace, and their delegates at the Peace Conference signed in March, 1919, a memorandum, which claimed a right to become parties to the treaties of peace. This they said would record the status attained by the dominions, and added: "The procedure is in consonance with the principles of constitutional government that obtain throughout the Empire. The Crown is the Supreme Executive in the United Kingdom and in all the Dominions, but it acts on the advice of different ministries within different constitutional units; and under Resolution IX of the Imperial War Conference, 1917, the organization of the Empire is to be based on equality of nationhood."

The Treaty of Versailles was in fact signed by the representatives of the dominions,[1] and in its provisions for the League of Nations they were given membership like independent countries. For freedom in domestic affairs an understanding with Great Britain is enough, but a status as distinct international units involves a recognition by foreign states. Taking part in the treaty of peace and membership in the League secured this, they believed, from the other nations that ratified the treaty. But the United States did not do so, and in fact the very representation of the dominions in the Assembly of the League was one of the

[1] Newfoundland was not included.

objections raised against the Covenant. Nor were they invited to the Washington Conference on disarmament.

They sought, therefore, to obtain in some other way the recognition they desired, and the occasion came in 1923, on the making of a treaty to regulate the halibut fishery on the western coast of North America. Canada had negotiated it, and, on the ground that it affected her alone, insisted that it should be signed, in the name of the King, only by her representative, without the participation of the British Ambassador. After a conflict of views between the Secretaries of State and of the Colonies at Westminster, the British government yielded to Canada's demand — for in practice dominion status means that the dominion shall have any degree of autonomy that it seriously desires — and the treaty was signed by Mr. Lapointe alone. But the Senate of the United States, not appreciating Canada's aim, ratified the treaty with an understanding that its restrictions should apply to all British subjects. This would have involved a ratification by Great Britain, and defeated the Canadian object. The Parliament at Ottawa refused, therefore, to accept the understanding, and the Senate ultimately ratified the treaty in its original form. Since then treaties between the United States and Canada, regulating the level of water in the Lake of the Woods and defining certain boundary lines, have been executed in the same form.[1]

Another example of the desire for a status as international units came in connection with copyright. Hitherto proclamations of the President of the United States in regard to individual dominions had recited that assurances have

[1] The principles which the dominions should follow in making such treaties were laid down in a resolution of the Imperial Conference of 1923. *Summary of Proceedings*, Cd. 1987. Res. IX.

been received from the Government of Great Britain that the Governor General has issued an order in Council furnishing the reciprocity required by the Act of Congress. But in 1923, at the request of South Africa, transmitted by the British Ambassador, the words "from the Government of Great Britain" were omitted. Other examples may be seen in the statement of Mr. King, the Canadian prime minister, that Canada is not bound by the Treaty of Lausanne with Turkey, not having taken part in its negotiation; and in the authority given her in May, 1920, to appoint a separate minister at Washington. As yet she has not acted under this power; but Ireland, having acquired the same measure of autonomy as Canada, has done so.

Unity of the Empire

Whether the British possessions are a single state, or more than one, may hereafter puzzle international jurists, if not statesmen confronted with questions arising under treaties. When all the self-governing members act together in negotiating and ratifying treaties, as is the case in matters deemed to affect them all, the Empire appears as a single whole; but when they make separate treaties, they appear as distinct international units. Nor is there agreement upon the theory of their relations to each other. The ordinary view in England seems to be that the British Parliament and government are the imperial authorities, but do not use their powers where it would be unwise or unfair to do so; and it may be observed that the treaty with the Irish Free State defines the relation of that State to the "Imperial Parliament and Government." Yet nearly three years earlier the representatives of the dominions had declared that the "Crown is the Supreme Executive in the United Kingdom and in all the Dominions, but it acts on

the advice of different ministries within different constitutional units"; and that "the organization of the Empire is based on equality of nationhood"; thereby excluding the idea of an imperial parliament or government; and this seems to be the prevalent conception in the dominions.

Of consultation among the self-governing members there is an abundance. Informal communications pass constantly between the cabinets of Great Britain and of the dominions; and Imperial Conferences are held in London at frequent intervals. But these conferences are for discussion, and have no power to take action binding on the Empire. Whatever the theory may be, there is in fact, — that is in practice, — no imperial legislative or executive organ. Among the people of British descent the sentiment of loyalty is strong, but one finds little desire for imperial federation either in England or the dominions. It would be too much to say that everyone is satisfied with the present relations, but few people do not feel still greater objections to any proposal for a joint control of common interests, which would inevitably mean some loss of self-direction by the several parts. This is true not only of political, but also of economic, unity. The dominions are unwilling to accept the English principle of free trade, and at the election of December, 1923, the people of Great Britain rejected decisively the idea of a preferential tariff in favor of the dominions.

The future of the British Commonwealth of Nations has a profound interest for all mankind, but its evolution is not easy to foresee. An autocrat or a ruling class may govern and hold together a number of distinct nationalities, but can this be done in the case of democracies by an informal league, without a common government through which they are organized as a single nation?

CHAPTER VI

FRANCE: INSTITUTIONS

In order to understand the government of a country it is not enough to know the bare structure of its institutions. It is necessary to follow the course of politics; to inquire how far the various public bodies exercise the authority legally vested in them; and to try to discover the real sources of power. It is necessary, in short, to study the actual working of the system; and although this depends chiefly upon the character, the habits, and the traditions of the people, it is also influenced in no small measure by details — like the method of voting, the procedure in the legislative chambers, and other matters — that are too often overlooked on account of their apparent insignificance. Now in several of the states on the continent of Europe the main features of representative government have been copied directly or indirectly from English models, while the details have grown up of themselves, or are a survival from earlier tradition. It is not surprising, therefore, that the two are more or less inconsistent with each other, and that this want of harmony has had a pronounced effect on public life.

Origin of Parliamentary Government

The Middle Ages gave birth to two political ideas. The first of these was a division of the people into separate classes or estates, each of which had independent political functions of its own. The second was representative government, or the election — by those estates whose members

were too numerous to assemble in a body — of deputies authorized to meet together and act for the whole estate. The number of these estates, and the number of separate chambers in which their representatives sat, varied in the different countries of Europe;[1] but it so happened that in England all the political power of the estates became in time vested in two chambers.[2] One of them, the House of Lords, contained the whole body of peers, who were the successors of the great feudal vassals of the crown; while the other, the House of Commons, was composed of the deputies from the towns and counties, who had gradually consolidated into a single house, and might be said to represent all the people who were not peers.

By degrees the House of Commons acquired the right of originating all bills for raising or spending money, and hence its support became essential to the crown. But its members were self-reliant, and on the whole less open to court influence than the peers. They felt under no obligation to support the policy of the government, or to vote an appropriation unless they understood and approved the purpose for which it was to be used; and King William III, during his wars with France, found them by no means as easy to manage as he could wish. Hitherto his ministers had been selected from both political parties, and hence were not in harmony with each other, and were unable to exert an effective influence in Parliament; but between 1693 and 1696 he dismissed the Tories, and confided all the

[1] Thus in France, and in most continental countries, there were three, while in Sweden there were four: the clergy, the nobles, the cities, and the peasants. The existence of only two Houses in England might almost be called an accident. (Cf. Freeman, *Growth of the English Constitution*, p. 93.)

[2] In 1664 Convocation, which was the ecclesiastical chamber, discontinued the practice of voting separate taxes on the clergy, and thus the clergy definitely ceased to be an estate of the realm. (Cf. Hallam, *Const. Hist. of England*, ch. xvi.)

great offices of state to the Whigs, who had a majority in the Commons. The result was that the House which had been turbulent became docile; and the ministers by winning its confidence were able to guide it, and obtain the appropriations that were required. This was the origin of the practice of selecting the ministers from the leaders of the majority in Parliament — a practice which at a later time crystallized into a principle of the British constitution.[1] But of course men who held the most important offices, and at the same time led the House of Commons, were certain not to be mere tools in the hands of the king. They were sure to try to carry out their own policy, and when the sceptre of William had passed into the hands of the first two Georges, who were foreigners and took little interest in English politics, the ministers exercised the royal power as they pleased, and became in fact the custodians of the prerogatives of the crown. The subordination of the king to his ministers is, indeed, the inevitable result of the system; for so long as the latter retain their influence over the House, and can direct its votes, they can hold their offices and administer them according to their own views. If the king attempts to dismiss them they can block the wheels of government, by inducing Parliament to withhold supplies; and if, on the other hand, they cease to be the leaders of the House, and a different party with new leaders gets a majority, the king finds himself obliged to send for these and entrust the government to them. The system which had been devised in order that the king might control the House of Commons became, therefore, the means by which the House of Commons, through its leaders, controlled the king, and thus all the power of the House of Commons and of the crown became vested in the same men, who

[1] Macaulay, *History of England*, ch. xx.

guided legislation and took charge of the administration at the same time.

The House of Lords, meanwhile, was losing ground. It had no right to initiate or amend money bills, and, what was far more important, it had no influence on the formation or the policy of the cabinet. The ministers were, indeed, often peers, but they were not selected because they belonged to the majority in the House of Lords, nor did they resign when that body voted against them. Like their colleagues from the other House, they represented the majority in the Commons, and were solidly in accord with it. The House of Lords, therefore, found itself confronted by the combined power of the crown and the House of Commons, and this it was unable to resist. In fact the power to create new peers furnished the crown, or rather the ministers acting in its name, with a weapon always ready to break an obstinate resistance; and at the time of the Reform Bill of 1832 a threat of this kind was enough to compel submission. The upper house thus gradually lost authority, and when it attempted to exert it again on the plea that it was reserving questions for the decision of the people, it was shorn of much of its power by the Act of 1911.

The ministers remain in office only so long as they continue to be the leaders of the lower house and are able to control the majority. When this condition has changed, a vote is sometimes passed to the effect that the ministers have ceased to possess the confidence of the House; but such an express declaration is rarely used at the present day; and a hostile vote on any matter of considerable importance is treated as a proof that the government has no longer the support of a majority. After such a vote, therefore, the ministers resign, and if there is a normal division

into two parties the crown sends for the leader of the Opposition, and entrusts him with the formation of a cabinet. The defeated ministers have, however, one other alternative. If they think that the House of Commons has ceased to be in harmony with the opinion of the nation, they can dissolve Parliament in the name of the crown, and try the chance of a new election. Thus in the English parliamentary system the direction of the legislature, and the control of the executive, is in the hands of the leaders of the majority in the House of Commons. For their exercise of power these leaders are directly responsible to the House of Commons, which can call them to account at any time; while the House itself is responsible to the people, which gives its verdict whenever the end of the term of Parliament or a dissolution brings about a general election.

Parliamentary Government on the Continent

Turning now from the consideration of English forms of government to those in use on the Continent, we find that the main features of the British constitution have been very generally imitated. In fact, the plan of two chambers — one of which issues from an extended suffrage and has the primary control of the purse — and of a cabinet whose members appear in the chambers and are jointly responsible to the more popular one, resigning on an adverse vote, has spread widely over Europe. These features of the parliamentary system are striking, and have become famous, while the procedure in the House of Commons, which enables the system to work smoothly, has attracted far less attention, and has been followed very little. This is peculiarly true of France, where the principle of cabinet responsibility has been adopted to the fullest extent, but where there exist at the same time several practices that help to

twist parliamentary government out of the British form. More curious still is the fact that these very practices have been blindly copied by other countries which intended to imitate the English system.

A description of the French government must begin with its structure, with the legal composition and powers of the different political bodies. This will occupy the present chapter. In the next, the actual working of the system will be considered, especially in regard to the character of political parties; and an attempt will be made to explain the peculiarities that are found by a reference to the condition of the people, and to those parts of the political machinery that seem to have a marked effect. In other words, we shall begin with the skeleton, and then take up the muscles and nerves.

The French Constitution

The first thing one looks for in a modern government is the constitution; but although the French Republic has a written constitution, it differs in two very important respects from those to which we are accustomed. It is not comprised in any one document, but in a series of distinct laws; and it contains few provisions limiting the functions of the different bodies, or prescribing fundamental rights which the state is enjoined to respect. This is a departure not only from American but also from the earlier French usage, for previous constitutions in France have been long documents and have contained elaborate bills of rights; although the absence of practical guaranties has made their effectiveness depend upon the good pleasure of the government. The present constitution is very different, and barely provides for the organization of the powers of the state, without even speaking of such important matters as a yearly budget or the tenure of office of the judges. It does

little more than establish the main framework of the government by declaring what the chief organs of public life shall be, leaving them almost entirely free to exercise their authority as they see fit. The reason for such a departure from French traditions is to be found in the circumstances of the case. The earlier constitutions in France were attempts to frame an ideal system, but the present one resulted from an immediate need of providing a regular government of some sort that could rule the country for the time, and it was drawn up by men who had no belief in its inherent perfection. To understand this it is necessary to glance at the history of the period.

History of its Creation

The rapid series of defeats suffered by the French armies at the hands of the Germans, in 1870, destroyed the tottering authority of the Emperor, and when the news of the surrender of Napoleon III at Sedan reached Paris an insurrection broke out on the fourth of September. A republic was at once proclaimed; but this was no time to debate plans for a constitution, and so long as the war lasted the country was ruled by the self-elected Government of the National Defense. When the war was over, a National Assembly with indefinite powers was chosen by universal suffrage. The member of this body who commanded the most general public confidence was Thiers, the historian and former minister of Louis Philippe. To him the Assembly entrusted the executive power, and in August, 1871, it gave him the title of President, without, however, fixing any term for the duration of the office. Thiers was constantly urged to introduce the parliamentary system by allowing his ministers to assume the responsibility for his acts; but this he refused to do, saying that the position in

which it would place him, although perfectly consistent with the dignity of an hereditary king, was for him, a little *bourgeois*, entirely out of the question.[1] He held himself, however, personally responsible to the Assembly for the conduct of his government, took part in the debates on the measures he proposed, and declared that he was ready to resign at any time, if the majority wanted him to do so.[2] This state of things continued for nearly two years, when a hostile vote forced Thiers to retire. His successor, Marshal MacMahon, was elected for a term of seven years, and as the new President was not a member of the Assembly, his cabinet became responsible in the parliamentary sense. But although the chief magistrate now held office for a fixed period, and was freed from the caprices of an uncertain majority, still there was no constitution and no permanent organization of the government. The situation was, in fact, a provisional one, prolonged abnormally by the strange condition of politics. The monarchists formed a majority of the Assembly, but they were hopelessly divided into two sections — the Legitimists, whose candidate was the Comte de Chambord, and the Orleanists, who followed the Comte de Paris. At one moment it seemed not impossible that the Comte de Chambord might become king, and some of his supporters opened negotiations for the purpose; but these were brought to nothing by the obstinacy of the prince himself, who was a true scion of his race, and would not yield one jot of his pretensions. He even

[1] The law of Aug. 31, 1871, declared that the President as well as the ministers should be responsible to the Assembly. See Dupriez, *Les Ministres dans les Principaux Pays d'Europe et d'Amérique*, ii. 320.

[2] The law of March 13, 1873, abolished the right of the President to take part in debate, and while allowing him to address the Assembly, ordered the sitting to be suspended immediately after his speech. This was, of course, an attempt to reduce the personal influence of Thiers. (Dupriez, ii. 321–322.)

refused to accept the tricolor flag that means so much to Frenchmen, and clung doggedly to the ancient white standard of his house.

The Constitutional Laws

Under such circumstances a monarchy was out of the question, and so this assembly of monarchists at last set to work to organize a republic; or, rather, a sufficient number of monarchists, feeling that a republic was, for the time at least, inevitable, joined with the minority to establish a government on the only basis possible.[1] But although the republican form was adopted, the institutions that were set up departed essentially from the ideas which the French had been accustomed to associate with that term. The present government, like all political systems that have been created suddenly and have proved lasting, was essentially a compromise. From the French republican principles there was borrowed, besides the name, little more than the election of the chief magistrate, while from the traditions of constitutional monarchy were taken the irresponsibility of the head of the state, and the existence of a second legislative chamber.[2] Now it was natural that no one should feel inclined to construct an ideal system on a hybrid foundation of this kind. Moreover none of the parties regarded the work of the Assembly as final, for the monarchists looked forward to a future restoration of the

[1] Very good brief descriptions of the formation of the Constitution may be found in Bozérian's *Étude sur la Révision de la Constitution*, and in Professor Currier's *Constitutional and Organic Laws of France*. The latter, published as a supplement to the *Annals of the American Academy of Political Science* (March, 1893), gives a translation into English of all these laws. See also an article by Saleilles on the "Development of the Present Constitution of France." (*Ann. Amer. Acad. of Pol. Sci.*, July, 1895.)

[2] Lebon, *Frankreich* (in Marquardsen's *Handbuch des Oeffentlichen Rechts*), p. 19.

throne, while their adversaries hoped to place the Republic before long on a more secure and permanent footing. Hence the Assembly did no more than provide for the immediate organization of the government in as brief and practical a manner as possible. It passed three constitutional laws, as they are called, which are in the form of ordinary statutes, and very short and concise. One of them, that of February 25, 1875, provides for the organization of the powers of the state. Another, that of February 24, 1875, deals in greater detail with the organization of the Senate. And the third, dated July 16, 1875, fixes the relations of the powers of the state among themselves.

Amendments

The provisional character of the constitution is clearly seen in the method of amendment. It has been the habit in France to make a sharp distinction between the constituent and legislative powers, the former being withdrawn to a greater or less extent from the control of the Parliament. But in this instance both of the great parties wanted to facilitate changes in the fundamental laws, in order to be able to carry out their own plans whenever a favorable occasion might present itself.[1] A departure from tradition was therefore made, and it was provided that the constitutional laws could be amended by a National Assembly, or congress, composed of the two branches of Parliament sitting together, which should meet for this purpose whenever both chambers on their own motion, or on that of the President of the Republic, declared the need of revision.[2]

[1] Cf. Borgeaud, *Établissement et Révision des Constitutions*, part iii, liv. ii, ch. viii.

[2] Const. Law of Feb. 25, 1875, Art. 8. It is not provided whether the Chambers shall declare in general terms that there is a need of revision, or shall specify the revision to be made, and this point has given rise to lively

The constitutional laws have been twice amended in this way. On the first occasion (June 21, 1879), the provision making Versailles the capital was repealed, and thereupon a statute was passed transferring the seat of government to Paris.[1] On the second occasion (August 14, 1884), several amendments were made. Among these one of the most notable changed the provisions relating to the mode of electing senators, and another declared that the republican form of government cannot be made the subject of a proposal for revision — the object of the latter being to prevent the destruction of the Republic by constitutional means. The device of providing that a law shall never be repealed is an old one, but I am not aware that it has ever been of any avail.

This method of amendment has virtually rendered the Parliament omnipotent; for, excepting the provision about changing the republican form of government, there is no restriction on its authority. The chambers cannot, it is true, pass an amendment to the constitutional laws in the form of an ordinary statute, but if they are agreed they can pass it by meeting as a National Assembly. The power of the chambers is therefore nearly as absolute as that of the British Parliament.[2] The principle, moreover, that the fundamental law cannot be changed by ordinary statute is devoid of legal sanction, for if the chambers should choose to pass an act of this kind, no court or official could legally prevent its application.[3] But while the constitution

debates; but on the two occasions when a revision was actually undertaken, the Chambers passed identical resolutions specifying the articles to be amended. (Lebon, *Frankreich*, pp. 74, 75; Saleilles, *op. cit.*, pp. 6, 7, 9.)

[1] Law of July 22, 1879. This act provides, however, that the National Assembly shall meet at Versailles.

[2] Cf. Saleilles, *op. cit.*, p. 11.

[3] Cf. Laferrière, *Traité de la Jurisdiction Administrative*, i. 5.

imposes no legal restraint on the Parliament, it would be a great mistake to suppose that it has no effect. On the contrary, it has such moral force that any attempt to pass a statute that clearly violated its terms would awake a strong repugnance; and indeed a suggestion by the president of one or other of the chambers that a bill would be unconstitutional has more than once sufficed to prevent its introduction.[1] On the other hand, the fact that formal amendments can be made only in joint session, and only after both chambers have resolved that there is a need of revision, has some influence in preventing changes in the text of the constitutional laws, because the Senate, being the more conservative body, and only half as large as the other House, is timid about going into joint session, not knowing what radical amendments may be proposed there, and fearing to be swamped by the votes of the deputies.

Let us now examine the organs of the state in succession, taking up first the Parliament with its two branches, the Senate and the Chamber of Deputies; then turning to the President as the chief magistrate of the Republic; and finally passing to the ministers as the connecting link between the Parliament and the President, and the controlling factor in the machinery of the state.

The Chamber of Deputies

The composition of the Chamber of Deputies is left to ordinary legislation, except that the constitutional law of February 25, 1875, Article 1, provides for its election by universal suffrage. By statute the ballot is secret, and the franchise extends to all men over twenty-one years of age who have not been deprived of the right to vote in consequence of a conviction for crime, and who are not bank-

[1] Lebon, *Frankreich*, p. 23.

rupts, under guardianship, or in active military or naval service.[1] To be eligible, a candidate must be twenty-five years old and not disqualified from being a voter.[2] Members of families that have ever reigned in France are, however, excluded;[3] and in order to prevent as far as possible the use of pressure, the law forbids almost every state official to be a candidate in a district where his position might enable him to influence the election.[4] As a further safeguard against the power of the administration, which is justly dreaded by the French Liberals, it is provided that all public servants who receive salaries, except a few of the highest in rank, shall lose their offices if they accept an election to Parliament, and that a deputy who is appointed even to one of these highest offices, unless it be that of minister or undersecretary, shall lose his seat.[5]

The Chamber of Deputies is elected for four years, and consists at present of six hundred and two members; ten of the seats being distributed among the various colonies, and six allotted to Algeria, while the remaining deputies are chosen in France.

Scrutin de Liste and Scrutin d'Arrondissement

The method of election has varied from time to time between that of single electoral districts, a system called the *scrutin d'arrondissement*, and that of the *scrutin de liste*, which consists in the choice of all the deputies from each department on a general ticket; the difference being the same

[1] Arts. 1, 2, and 5 of the Law of Nov. 30, 1875. Poudra et Pierre, *Droit Parlementaire*, §§ 482–484, 498–514.

[2] Law of Nov. 30, 1875, Arts. 6, 7.

[3] Law of June 16, 1885, Art. 4.

[4] Law of Nov. 30, 1875, Art. 12.

[5] Ibid., Arts. 8, 9, and 11. A deputy appointed to one of these offices may, however, be reëlected (Art. 11).

that exists between our method of electing congressmen each in a separate district, and our method of choosing presidential electors on a single ticket for the whole state. The *scrutin d'arrondissement*, or single district system, prevailed from 1876 to 1885, when the *scrutin de liste* was revived;[1] partly, no doubt, in order to swamp the reactionary minority, but also with the hope of withdrawing the deputies from the pressure of petty local interests, which had become lamentably strong, of getting a chamber of broader and more national views, and of forming a republican majority that would be more truly a great and united party. The experiment did not last long enough to produce any sensible effect of this kind; and indeed the change seems, on the whole, to have resulted in an increase of the power of the local politicians, who formed themselves into nominating and electoral committees for the department.

At the general elections of 1885 the Reactionaries gained rather than lost seats in spite of the *scrutin de liste;* and the disgust of the Republicans with the device from which they had hoped so much was brought to its height two or three years later by General Boulanger. This singular man — who, after enjoying a marvelous popularity, became in a short time an object of contempt, if not of ridicule — had been minister of war in one of the recent republican cabinets. He was forced to resign on account of his enormous expenditure on the army, and the fear that he would plunge the nation into a war with Germany. He then posed as the savior of the country; and, being at the height of his reputation, he made use of the *scrutin de liste* to hold a *plébiscite* or popular vote of France piecemeal. Whenever a seat became vacant in a department he stood as a candidate;

[1] Law of June 16, 1885.

and if elected he held the seat only until a vacancy occurred in another department, when he resigned to appear as a candidate again. After doing this in several large departments, he was able to declare that a considerable part of the French people had pronounced themselves for him — a proceeding which would have been impossible if the deputies had been elected in five hundred and seventy-six separate districts. His success at the by-elections had so frightened the Republicans that they restored the *scrutin d'arrondissement*, or single electoral districts, before the general election of 1889 took place.[1]

This system, which remained in effect for the next thirty years, did not prove satisfactory. The small size of the arrondissement emphasized local attachments and facilitated bribery. Moreover, the *sous-préfet*, the administrative head of the arrondissement, could, it was charged, control elections; and because of the basis of apportionment employed, a voter in, say, Barcelonnette, had far more electoral effect than a voter in Nantes.[2] For these various reasons a vigorous campaign was waged against the *scrutin d'arrondissement*, and finally led to the passage of the Election Law of 1919, which restored the *scrutin de liste*.

[1] Law of Feb. 13, 1889. In order to frustrate more effectually Boulanger's scheme, a law of July 17, 1889, provided that no one should be candidate in more than one district. The meaning and effects of these laws are discussed by Saleilles (*Ann. Am. Acad. Pol. Sci.*, July, 1895, pp. 19–37). A measure providing for the restoration of the *scrutin de liste* with an arrangement for proportional representation passed the Chamber of Deputies in 1912, but was rejected by the Senate in the following March. For the arguments in its favor, see "Electoral Reform in France," by J. W. Garner, *American Political Science Review*, vii, 610–638 (Nov., 1913).

[2] Because fractions, no matter how small, of 100,000 gave a right to an additional seat. For examples, cf. Raymond Leslie Buell, *Contemporary French Politics*, p. 155.

The Chamber a Tumultuous Body

Every large body of men, not under strict military discipline, has lurking in it the traits of a mob, and is liable to occasional outbreaks when the spirit of disorder becomes epidemic; but the French Chamber of Deputies is especially tumultuous, and, in times of great excitement, sometimes breaks into a veritable uproar. Even the method of preserving order lacks the decorum and dignity that one expects in a legislative assembly. The President has power to call a refractory member to order and impose a penalty in case he persists; but instead of relying on this alone, he often tries to enforce silence by caustic remarks. The writer remembers being in the Chamber when M. Floquet was presiding — the same man who had fought a duel with General Boulanger and wounded him in the throat. A deputy who had just been speaking kept interrupting the member who was addressing the Chamber, and when called to order made some remark about parliamentary practice. The President cried out, "It is not according to parliamentary practice for one man to speak all the time." "I am not speaking all the time," said the deputy. "At this moment you are overbearing everybody," answered the President. This incident is related, not as being unusual or humorous, but as a fair sample of what was constantly occurring in the Chamber. Even real sarcasm does not seem to be thought improper. Thus in a later debate a deputy, in the midst of an unusually long speech, was continually interrupted, when the President, Floquet, exclaimed, "Pray be silent, gentlemen. The member who is speaking has never before approached so near to the question."[1] These sallies from the chair are an old tradi-

[1] *Journal Officiel* of Nov. 18, 1892.

tion in France, although, of course, their use depends on the personal character of the President. One does not, for example, find them at all in the reports of debates during the time Casimir-Perier was presiding over the Chamber. When the confusion gets beyond all control, and the President is at his wits' end, he puts on his hat; and, if this does not quell the disturbance, he suspends the sitting for an hour in order to give time for the excitement to subside.

The Senate

The French Senate consists of three hundred members; and, by the constitutional law of February 24, 1875, two hundred and twenty-five of these were to be elected for nine years by the departments, while seventy-five were appointed for life by the same National Assembly that framed that law. The life senators were intended to be a permanent feature of the Senate, and it was provided that when any one of them died, his successor should be elected for life by the Senate itself. A few years later, however, the Republicans, thinking such an institution inconsistent with democracy, passed the amendment to the constitutional laws to which a reference has already been made.[1] This, while leaving untouched the provisions relating to the existence and powers of the Senate, took away the constitutional character from those regulating the election of senators, which thus became subject to change by ordinary legislation. A statute was then passed (December 9, 1884) providing that as fast as the life senators died their seats should be distributed among the departments, so that at present all the senators are elected in the same way. There are eighty-six departments in France, and by the act the senators are apportioned among them according to population.

[1] Const. Law of Aug. 14, 1884

Life senatorships having been abolished, the number of seats belonging to a department varies from two up to ten, while the territory of Belfort, each of the three departments of Algeria, and several of the colonies, are represented by one senator apiece.[1] The senators so elected hold office for nine years, one third retiring every three years.[2] They are chosen in each department of France by an electoral college composed of the deputies, of the members of the general council, of the members of the councils of the arrondissements, and of delegates chosen by the municipal councils of the communes.[3] Before 1884 each commune elected only one delegate,[4] but by the law of that year the number of delegates increases with the size of the communes, though much less than in proportion to the population. These communal delegates form a large majority of the electoral college, and hence the Senate was called by Gambetta the Great Council of the Communes of France.[5] Being thus dominated by the countryside, the Senate inclines to be more conservative than the Chamber, which is largely controlled by the great centres of population. Thus in 1919 the Senate rejected a Chamber bill providing for woman suffrage.

A senator must be forty years old; and since the law of 1884 the disqualifications for this office have been the same as for that of members of the Chamber of Deputies.[6]

Its Functions

The legislative power of the Senate and the Chamber of Deputies is the same, except that financial bills must origi-

[1] Law of Dec. 9, 1884, Art. 2. [2] Ibid., Art. 7.
[3] Ibid., Art. 6. [4] Const. Law of Feb. 24, 1875, Art. 4.
[5] Saleilles, *op. cit.*, p. 41.
[6] Law of Dec. 9, 1884, Arts. 4, 5, and *Provisions Temporaires*. Law of Dec. 26, 1887. Lebon, *Frankreich*, pp. 63, 64, 67.

nate in the latter;[1] but while it is admitted that the Senate may reduce proposals for taxes and appropriations, there is a dispute whether it can increase them or not, and debates on this point are constantly recurring. In practice the Chamber has sometimes accepted augmentations thus introduced, but more frequently the Senate has abandoned them.[2] Disagreements between the two Chambers over money bills may be referred to a conference committee, a procedure which, however, has been resorted to only three times.[3] In any case, the principle now seems firmly established that, while the Senate may propose amendments to money bills, the Chamber has the last word. The Senate has two peculiar functions. First, its consent is necessary for a dissolution of the Chamber of Deputies,[4] a provision designed as a safeguard against the President, for fear that he might dissolve the Chamber in order to attempt a *coup d'état* during its absence; and, second, the President is authorized, with the approval of the Council of Ministers, to constitute the Senate a high court to try any one for an attempt on the safety of the state.[5] This power has been

[1] Const. Law of Feb. 24, 1875, Art. 8.

[2] Dupriez, ii. 430–432.

[3] Edward M. Sait, *Government and Politics of France*, pp. 138, 141. Cf. also Eugène Pierre, *Traité de droit politique, electoral et parlementaire*, 5th ed., sec. 677. Conference committees may be established in case of any bill voted by the Chamber and modified by the Senate. Cf. Art. 107, *Règlement de la Chambre des Députés* (in force March 10, 1915), edition of 1920.

When a bill of the Chamber has been rejected by the Senate, it cannot again be considered for three months except upon the initiative of the Government (Art. 110).

[4] Const. Law of Feb. 25, 1875, Art. 5.

[5] Lebon, *Frankreich*, p. 73, Const. Laws of Feb. 24, 1875, Art. 9, and July 16, 1875, Art. 12. The procedure was regulated by a law of Aug. 10, 1889. By the Const. Law of July 16, 1875, Art. 12, the Chamber of Deputies can impeach the ministers, and in case of high treason the President of the Republic. The impeachments are tried by the Senate. For the interpretation put upon this clause, see Lebon, *Frankreich*, pp. 55–58.

used more than once, notably in the case of General Boulanger, who failed to appear for trial, and was condemned in his absence.[1]

Its Actual Influence

With such an organization and powers, an American might suppose that the Senate would be a more influential body than the Chamber of Deputies; but in reality it is by far the weaker body of the two, although it contains at least as much political ability and experience as the other house, and, indeed, has as much dignity, and is composed of as impressive a group of men as can be found in any legislative chamber the world over. The fact is that according to the traditions of the parliamentary system the cabinet is responsible only to the more popular branch of the legislature, and in almost every instance where a cabinet in France has resigned on an adverse vote of the Senate, the vote was rather an excuse for the withdrawal of a weakened ministry than the cause of its resignation. A case which occurred during the year 1896 is the only one where the responsibility of the ministers to the Senate was fairly raised, and where anything like a real contest took place between the chambers. On this occasion the Senate did certainly force a united and vigorous cabinet to resign, but it was enabled to do so only because the majority in the Chamber of Deputies was highly precarious, for there can be no doubt that if the cabinet could have relied on the hearty support of the Chamber it would have defied the Senate, as it had already done two months before. It has been only in very exceptional cases that the upper house

[1] The Senate may, however, decline to consider a case if of opinion that it does not fall within its jurisdiction. This point was apparently decided in the Cachin case of May, 1923. Cf. M. Hauriou, *Précis Élémentaire de Droit Constitutionnel*, p. 207.

has upset the ministry. Moreover the question at issue in the struggle of 1896 was not whether the cabinet is responsible to the Senate to the same extent that it is to the other chamber, but simply whether the Senate can insist on the removal of a ministry to which it is peculiarly hostile. No one has ever doubted that under ordinary circumstances the ministers are responsible only to the Chamber of Deputies. The majority in that body alone is considered in the formation of a cabinet, and an unfavorable vote there on any current matter of importance is followed by a change of ministers, while a similar vote in the Senate is not regarded as a reason for resignation. The latest instance was the resignation of the Herriot ministry in April, 1925, following two votes of censure by the Senate directed against the Government's financial policy. But Herriot's majority was already slipping away in the Chamber, which did not appear to care whether the Government fell or stayed in power.[1]

As a rule the Senate does not decide the fate of the ministries, and hence cannot control their policy. The result is that without sinking to the helplessness of the English House of Lords, it has become a body of secondary importance.[2] At one time it stood very low in public esteem, on account of its origin; for it was created by the Reactionaries in the National Assembly, and was regarded as a monarchical institution; and even after the greater part of its seats were occupied by Republicans, it was suspected of being only half-heartedly in favor of the republican form

[1] An analysis of the various cases that have occurred is given in the footnotes to earlier editions of this book.

[2] In his *Essays on Government* (ch. 1) the writer has tried to prove that this must necessarily be the condition of one of two chambers wherever the cabinet is responsible to the other; and that the cabinet cannot in the long run be responsible to both.

of government. Its condemnation of Boulanger increased its popularity by making it appear a real bulwark of the republic against the would-be dictator; but the prejudice against it has by no means disappeared, and the extreme Radicals have never ceased to demand its abolition, although conservative feeling in France will doubtless remain strong enough to prevent such a step. How great the influence of the Senate will be in the future is not easy to foretell. Some people were of opinion that with life members gone, many of whom had been distinguished in letters, in science, or in war, it would lose a good deal of its prestige. To some extent this fear has been realized. But, on the other hand, men of mark are still elected, and now that the Senate is not afraid of being thought lukewarm or hostile to the republic, and does not feel its existence seriously threatened, it has acquired more boldness and energy.[1] It is highly improbable, moreover, that it will become utterly powerless, so long as the deputies are divided into a number of political groups and the ministers are not able to speak with authority as the leaders of a great and united party.

Although the Senate has little or no share in directing the policy of the cabinet, it must not be supposed that it is a useless body. On the contrary, it does very valuable work in correcting the over-hasty legislation of the other chamber, and in case of disagreement often has its own way or effects a compromise.[2]

The two chambers meeting in joint session form what is called the National Assembly, which, as we have seen, has

[1] Dupriez, ii. 382–383. The present position and the probable future of the Senate are discussed by Saleilles, *op. cit.*, pp. 37–52. Professor Leon Duguit has proposed the creation of a Senate of professional or "functional" representatives, such as of the Chambers of Commerce, the Labor Unions, etc. *Manuel de Droit Constitutionnel*, p. 167.

[2] Dupriez, ii, 413–415.

power to revise the constitutional laws. It has one other function, that of electing the President of the Republic.

The President of the Republic

This officer is chosen for seven years, and is reëligible, the only limit on the choice of a candidate being found in the constitutional law of August 14, 1884,[1] which excludes all members of families that have ever reigned in France — a provision dictated by the fear that, like Napoleon III, a prince might use the presidency as a step to the throne. The President is at the head of a republic, but he lives and travels in a style that is almost regal, for the conception of a republic as severe, simple, and economical has changed very much in France since the Second Empire taught the nation extravagance.[2]

The duties of the President, like those of every chief magistrate, are manifold. He is the executive head of the nation, and as such executes the laws, issues ordinances,[3] and appoints all the officers of the government.[4] He has also certain functions of a legislative character, but, except for the right of initiative in legislation, these are not in fact very extensive. He has no veto upon the laws, and although he may require the chambers to reconsider a bill, the right has never been exercised.[5] With the consent of the Senate he can dissolve the Chamber of Deputies,[6] but this power has also fallen into disuse, because the members

[1] Const. Law of Feb. 25, 1875, Art. 2.

[2] Cf. G. Channes, *Nos Fautes*, Letter of Jan., 1885; Theodore Stanton in the *Arena*, Oct., 1891.

[3] For the nature of this power, see *infra*.

[4] Const. Law of Feb. 25, 1875, Art. 3.

[5] Const. Law of July 16, 1875, Art. 7; Dupriez, ii, 369. It is not likely to be used unless, after the bill has passed, the cabinet that favored it has resigned, and another hostile to it has come in.

[6] Const. Law of Feb. 25, 1875, Art. 5.

of his cabinet are very much under the control of the deputies, who dread the risk and expense of an election; and, in fact, a dissolution has not taken place since President MacMahon's unsuccessful attempt to use it in 1877 as a means of getting a chamber in sympathy with his views. The President has power to make treaties; but treaties of peace, of commerce, those which burden the finances, affect the persons or property of French citizens in foreign countries, or which change the territory of France (in other words, all the more important ones), require the approval of the chambers.[1] A declaration of war also requires their consent;[2] but as a matter of fact the government managed to wage war in Tunis and Tonquin without any such consent, alleging at first that the affair was not a war, and afterwards defending itself on the ground that the Parliament by voting credits had virtually sanctioned its course.[3]

His Personal Authority

Unlike the President of the United States, the French President is not free to use his powers according to his own judgment; for in order to make him independent of the fate of cabinets, and at the same time to prevent his personal power from becoming too great, the constitutional laws declare that he shall not be responsible for his official conduct, except in case of high treason, and that all his acts of every kind, to be valid, must be countersigned by one of the ministers;[4] and thus, like the British monarch, he has been put under guardianship and can do no wrong. When, therefore, we speak of the powers of the President, it must

[1] Const. Law of July 16, 1875, Art. 8.
[2] *Ibid.*, Art. 9.
[3] See Lebon, *Frankreich*, pp. 46, 47.
[4] Const. Law of Feb. 25, 1875, Arts. 3 and 6.

be remembered that these are really exercised by the ministers, who are responsible to the Chamber of Deputies. The President, indeed, is not usually present at the cabinet consultations (*conseils de cabinet*) in which the real policy of the government is discussed, and as a rule he presides only over the formal meetings (*conseils des ministres*) held for certain purposes specified by law.[1] He has power, it is true, to select the ministers, and in this matter he can use his own discretion to some extent, but in fact he generally entrusts some one with the formation of a cabinet, and appoints the ministers this man suggests.[2] His duty in these cases is not, however, as simple as that of the English King, because, for reasons that will be discussed in the next chapter, there is usually, on the fall of a cabinet, no leader of a victorious opposition to whom he can turn. A good deal of tact and skill is sometimes required at cabinet crises, and it is said that on one occasion the formation of a ministry was due to the personal influence of President Carnot.[3]

Sir Henry Maine makes merry over the exalted office and lack of power of the President. "There is," he says, "no living functionary who occupies a more pitiable position than a French President. The old kings of France reigned and governed. The Constitutional King, according to M. Thiers, reigns, but does not govern. The President of the United States governs, but he does not reign. It has been reserved for the President of the French Republic neither to reign nor yet to govern."[4]

At first sight the situation does, indeed, appear somewhat

[1] Lebon, *Frankreich*, p. 53; Dupriez, ii, 350–351 and 367–368, states that the President is often present when important matters are discussed, but cannot influence the decision.

[2] Dupriez, ii, 340.

[3] See "France under M. Constans," in *Murray's Magazine* for May, 1890.

[4] *Popular Government*, p. 250.

irrational. When the head of the state is designated by the accident of birth it is not unnatural to make of him an idol, and appoint a high priest to speak in his name; but when he is carefully selected as the man most fit for the place, it seems a trifle illogical to entrust the duties of the office to some one else. By the constitution of Sieyès an ornamental post of a similar character was prepared for the First Consul, but Napoleon said he had no mind to play the part of a pig kept to fatten. In government, however, the most logical system is not always the best, and the anomalous position of the President has saved France from the danger of his trying to make himself a dictator, while the fact that he is independent of the changing moods of the chambers has given to the Republic a dignity and stability it had never enjoyed before. It is a curious commentary on the nature of human ambition, that in spite of the small power actually wielded by the President in France, the presidential fever seems to have nearly as strong a hold on public men as in this country.

Several organizations in France have demanded the establishment of a stronger executive, with a view to securing a more stable and efficient government.[1] Apparently this was the aim of President Millerand, who campaigned actively for the reëlection of the National Bloc in May, 1924. This unusual procedure naturally angered the opposition, the *Cartel des Gauches*, which won the election. Consequently, one of their first acts was to pass a resolution that "The Chamber, considering that M. Millerand, President of the Republic, has in conflict with the spirit of the Constitution pursued a personal policy; considering that he has openly taken sides with the National Bloc; considering that the policy of the National Bloc has been condemned

[1] Buell, *Contemporary French Politics*, pp. 223 ff.

by the country; is of the opinion that the continuance of M. Millerand at the Élysée would injure the Republican conscience, would be the source of incessant conflict between the Government and the head of the state, and a constant danger to the régime itself." [1]

Although M. Millerand at first declined to resign, the Chamber refused to recognize any ministry appointed by him. He was therefore obliged to give way; and the National Assembly elected a new president, M. Gaston Doumergue. Thus the last attempt to establish an independent presidency of the American type in France failed. In fact, it is not consistent with the responsibility of ministers to the Chamber of Deputies.

The Conseil d'État

Before proceeding to consider the ministers, there is one other institution which claims attention on account of its past rather than its present position. This is the *Conseil d'État* or Council of State,[2] a body whose importance has varied a great deal at different times. Under Napoleon I, and again during the Second Empire, in addition to its possession of executive functions, it was a real source of legislation; while at the time of the Restoration and the Monarchy of July it became what it is to-day, a council with high attributes, but very little authority. Except as a court of administrative justice,[3] it has now lost most of its

[1] For the documents, cf. *Revue du droit public*, 1924, pp. 242, 463.

[2] Aucoc, *Conférences sur le Droit Adm.*, liv. ii, ch. i, § 3; Ducrocq, *Cours de Droit Adm.*, tit. i, ch. i, sec. i, § iii; Bœuf, *Résumé sur le Droit Adm.*, ed. of 1895, pp. 32 *et seq.*; cf. Lebon, *Frankreich*, pp. 96–98; Dupriez, ii, 285–316, *passim*, and pp. 481–492; Goodnow, *Comparative Administrative Law*, i, 107–113. See also articles entitled "Le Conseil d'Etat et les Projets de Réforme," by Varagnac, *Revue des Deux Mondes*, Aug. 15 and Sept. 15, 1892.

[3] For its functions of this nature, see *infra*.

influence; for, although it must be consulted before certain classes of ordinances can be issued, and may be consulted on other administrative matters, its advice need never be followed; and in fact the habit of consulting it is said to have become little more than a mere form.[1] The legislative functions of the Council have faded even more completely to a shadow, as is proved by the fact that while the government or either of the chambers may seek its aid in the framing of statutes, the privilege is rarely exercised by the ministers, scarcely at all by the Senate, and never by the Chamber of Deputies.

The members of the Council are divided into several classes, but those belonging to the most important class, and the only ones who can vote when the Council sits as a court, are appointed and dismissed at will by the President of the Republic.[2]

The Ministers

In a parliamentary system the ministers have two distinct functions. One of these is the same as that of the members of the President's Cabinet in the United States, and consists of the management of the departments of the administration. The other is the duty of representing the government in the legislature, urging the adoption of its measures, and defending its policy against the attacks of its adversaries. These two functions are not necessarily united; and, in fact, it has been a common habit in some

[1] "La Réforme Administrative — La Justice," by Vicomte d'Avenel, *Revue des Deux Mondes*, June 1, 1889, pp. 597–598.

[2] The other members are appointed by the President subject to certain conditions, but as he can dismiss any of them their tenure of office depends on the pleasure of the cabinet, and in fact by means of resignations or removals, most of the councilors were changed in 1879 in order to make the council Republican. — "Le Conseil d'Etat," Varagnac, *Revue des Deux Mondes*, Sept. 15, 1892, p. 295.

countries to appoint ministers without portfolios, as it is called, that is, without any executive duties at all, in order that they may devote their whole energy to the battles in Parliament.[1] Although there is nothing to prevent such a practice in France, it is not followed to-day, each minister being at the head of a particular branch of the administration. The number of departments, however, and the distribution of the public business among them, is not fixed by law, but is regulated from time to time by decree of the President of the Republic. The number of ministers is, therefore, constantly liable to change according to the immediate needs of the public service. At present, there are fourteen departments, or ministries: those of Foreign Affairs; Justice; Interior; War; Marine; Finance; Colonies; Public Instruction and Fine Arts; Public Works; Commerce; Agriculture; Labor; Liberated Territories; and Hygiene, Assistance and Social Prevision.

Their Responsibility to the Chambers

The constitutional law of February 25, 1875 (Article 6), declares that the ministers are collectively responsible to the chambers for the general policy of the government, and individually for their personal acts. The object of this clause was, of course, to establish the parliamentary system, and in fact the French ministry is responsible to the Chamber of Deputies, as the English is to the House of Commons, and resigns on a hostile vote on any matter of importance. Except, indeed, for the Ministers of War and of the Navy, who are usually military men, the cabinet officers are almost always selected from among the members

[1] This practice virtually exists in England, because some of the offices held by the ministers, such as that of First Lord of the Treasury, and that of Chancellor of the Duchy of Lancaster, involve little or no administrative duties.

of Parliament, although the reason for this practice in England does not apply in France, because the ministers have a right to be present and speak in either chamber, whether members of it or not.[1]

Their Enormous Power

But in order to understand fully the position of the French ministers, and their relation to the Parliament, it is necessary to realize their enormous power, and this is due largely to three causes — the paternal nature of the government, the centralization of the state, and the possession by the executive of authority that in an Anglo-Saxon country would be lodged with the legislature or the courts of law.

On the first of these matters, the paternal nature of the government, there is no need to dwell at length. All governments are growing more paternal at the present day, for a reaction has set in against the extreme *laissez-faire* doctrines preached by Adam Smith, John Stuart Mill, and the English political economists of the earlier school. There is a general tendency to restrain the liberty of the individual and subject him to governmental supervision and control. Such control and supervision are traditional in France, and far exceed anything to which we are accustomed in this country. All trades and occupations are there subject to a great deal more police inspection than with us. They require more generally to be licensed, and are regulated and prohibited by the administrative officials with a much freer hand. And although the liberty of the press and the right of holding public meetings have been substantially realized under the republic, the right of association was very limited until the law of July 1, 1901, for no society of more than

[1] Const. Law of July 16, 1875, Art. 6. In practice this privilege is also accorded to their undersecretaries. Lebon, *Frankreich*, p. 52.

twenty persons, except business companies and associations of persons pursuing the same profession or trade, could be formed without the permission of the Minister of the Interior or the prefect of the department.[1] It is easy to see how much power all this paternalism places in the hands of the administration.

Local Government

An explanation of the centralization of the state entails a brief survey of local government; and here we meet with a deeply rooted French tradition, for centralization was already great under the old régime, and although the first effect of the Revolution was to place the administration of local affairs under the control of independent elected bodies, the pressure of foreign war, and the necessity of maintaining order at home, soon threw despotic power into the hands of the national government. Under Napoleon this power became crystallized in a permanent form, and an administrative system was established, more perfect, more effective, and at the same time more centralized than that which had existed under the monarchy.[2] The outward form of the Napoleonic system has been continuously preserved with surprisingly little change, but since 1830 its spirit has been modified in two distinct ways: first, by means of what the French call deconcentration, that is, by giving to the local agents of the central government a greater right of independent action, so that they are more free from the direct tutelage of the ministers; second, by a process of true decentralization, or the introduction of the elective principle into local government, and the extension of the

[1] Lebon, *Frankreich*, pp. 32–39; Ducrocq, tit. ii, ch. iii; ch. iv, § iii.

[2] For a short but vigorous comment on Napoleon's system, see G. L. Dickinson, *Revolution and Reaction in Modern France*, ch. ii.

powers of the local representative bodies. But although the successive rulers of France have pursued this policy rather steadily, the progress of local self-government has been far from rapid.[1] One reason for this is the habit of looking to the central authorities for guidance in all matters. Another is a fear on the part of the government of furnishing its enemies with rallying-points which might be used to organize an opposition — a fear that took shape in provisions forbidding the local elected councils to express any opinions on general politics, or to communicate with each other except about certain matters specified by law. A third cause of the feeble state of local self-government is to be found in the fact that the Revolution of 1789 destroyed all the existing local divisions except the commune, and replaced them by artificial districts which have never developed any great vitality, so that the commune is the only true centre of local life in the republic.[2] A fourth, and perhaps the most potent cause of all, is the dread of disorder which has been constantly present in the minds of Frenchmen, and has made them crave a master strong enough to cope with any outbreak.

The Prefect

France is divided into ninety departments, at the head of each of which is a prefect, appointed and removed at pleasure by the President of the Republic, but in reality

[1] On the subject of local government, I have used Aucoc, *Conférences*, 3d ed.; Bœuf, *Résumé*, ed. of 1895; Leroy-Beaulieu, *Adm. Locale en France et en Angleterre;* Lebon's two works on France; Goodnow, *Comp. Adm. Law.* There is a popular account in Block, *Entretiens familiers sur l'Adm. de notre pays*. Within recent years, a movement called "regionalism" has advocated the division of France into "regions," modelled to a certain extent after the old provinces, each of which should be granted self-government. Cf. Jean Hennessy, *Régions de France;* Buell, ch. xii.

[2] Most of the existing communes were in fact created in 1789.

nominated by the Minister of the Interior. The office is, indeed, regarded as distinctly political, and the incumbent is often replaced when the minister changes. The prefect, who is by far the most important of the local officials, occupies a double position, for he is the agent of the central government in regard to those matters of general administration which are thought to concern the whole country, and at the same time he is the executive officer of the department for local affairs. In the former capacity he is in theory the immediate subordinate of the Minister of the Interior, but since his duties extend to all branches of the administration, he corresponds in practice directly with any minister in whose sphere of action the matter with which he is called upon to deal may lie. His authority as the agent of the central government is not, however, the same in all cases. Sometimes he is absolutely subject to the orders of the ministers. This is true when he executes general laws and ordinances; but when, for example, he directs the police of the department, or supervises the subordinate local bodies, he proceeds on his own responsibility, and his acts can be overruled by the central government only in case they are contrary to law, or give rise to complaints on the part of the persons affected by them. In pursuance of the policy of deconcentration, the prefect has been given an independent authority of this kind over a large number of subjects; and he was intended to exercise his own judgment in regard to them, but the influence and pressure of the deputies has, it is said, induced him to shirk responsibility as much as possible by referring doubtful questions to the ministers, and hence the centralization has not been diminished as much as was expected.[1] In matters of general administration, the prefect is assisted by a prefectorial

[1] Channes, Letter of October 1, 1884.

council of three or four members appointed by the President of the Republic; but, except when it sits as an administrative court, the functions of this body are almost altogether advisory, and their use has become scarcely more than a form.[1]

The General Council

As the executive officer for local affairs, the prefect carries out the resolutions of the General Council. This is the representative assembly of the department, and is elected by universal suffrage, one of the members being chosen in each canton for six years, and half of them being renewed every three years. The authority of the body is jealously limited. Its competence is almost entirely confined to affairs that are deemed to have a strictly local interest,[2] and even in regard to these its powers are not absolute, for its votes on certain matters can be annulled by the President of the Republic, and its budget, that is, the annual tax levy and list of appropriations, is not valid without his approval. Although the Council has the right of final decision in a considerable class of subjects, its actual power over them is curtailed in a variety of ways. In the first place it does not carry out its own votes, but their execution is entrusted to an agent of the central government, the prefect, who appoints all the officials, manages the public institutions, and signs the orders for all payments of money; the direct control of the council over his performance of these duties extending only to the election of a standing commission which

[1] Vicomte d'Avenel, "La Réforme Administrative," *Revue des Deux Mondes*, June 1, 1889, p. 596.

[2] Its functions in relation to the general administration consist in apportioning certain direct taxes, in giving its advice when asked, and in expressing its wishes on matters not connected with general politics.

has little more than a right of inspection.[1] In the second place, the prefect has an opportunity to exert a great deal of influence over the action of the Council, for not only has he a right to address it, but he prepares the budget and all other business, and in fact it is not allowed to act on any matter until it has heard his report.[2] Moreover, the Council is only permitted to sit a very short time. It has two regular sessions a year, whose duration is limited, one to a month, the other to a fortnight; and although extra sessions can be held they must not exceed one week apiece. Finally, its very existence is insecure, for it can be dissolved by the chief of the state. In general it may be said that in matters falling within its province the General Council cannot do everything it wants, but can prevent almost anything it does not want. Its financial resources are not large,[3] and its attention is confined for the most part to the construction of roads, subventions to railroads, and the care of schools, insane asylums, and other institutions of a similar character.

At one time a hope was entertained that politics might be kept out of the general councils, but it has not been fulfilled, the departmental elections being regularly conducted on party lines.[4] It has therefore been thought best to entrust the supervision of the communes largely to the central government and its representative the prefect, rather than to the councils with their partisan bias, and this, of

[1] The Council can delegate to this commission a somewhat indefinite class of functions, but it is not in fact a body of much importance. Dupriez, ii, 467–468.

[2] Aucoc, p. 282.

[3] Almost its only source of revenue is the addition of a limited sum to the direct state taxes.

[4] Bozérian, in his *Étude sur la Révision de la Constitution* (pp. 89–90), attributes this to the fact that the local assemblies take part in the election of senators.

course, deprives the latter of a part of the importance they would otherwise possess.[1]

The Arrondissement and the Canton

The next local division is the arrondissement. This is a mere administrative district without corporate personality, with no property, revenues, or expenses of its own, and although it has a sub-prefect and an elected council, neither of them has much power. In fact it has been proposed to abolish the arrondissement altogether.

The canton, which is the next subdivision, is really a judicial and military rather than an administrative district, and therefore does not concern us here.

The Commune

We now come to the communes, which are the smallest local entities, but differ enormously in area and population. They vary in size from twenty acres to over a quarter of a million, and they run all the way from a hamlet with a dozen inhabitants to large cities; yet with the exception of Paris, Lyons, and Marseilles they are all governed on one plan. The officer in the commune whose position corresponds to that of the prefect in the department is the mayor. He acts in the same way, both as agent of the central government, and as the executive head of the district, but whereas in the prefect the former character predominates, the mayor is chiefly occupied with local matters. It is largely for this reason that, unlike the prefect, he is not appointed by the President, but since 1884 has been elected by and from the communal council for the length of its own

[1] By the law of 1884 on municipalities, part of the supervision over these bodies, which had previously been in the hands of the general councils, was withdrawn and given to the prefect.

term.[1] The mayor is, however, by no means free from control. So far as he acts as agent of the central government, he is absolutely under the orders of the prefect. Nor is this all. The subject of communal police, which includes the public health and other matters of a kindred nature, is considered a part of the local administration, but the acts of the mayor in regard to it can be annulled by the prefect, who has also power in many cases to issue direct orders of his own. Moreover the police officials require to be confirmed by the prefect,[2] and can be removed only by him.[3] But even these extensive powers of control are not deemed enough, and it is provided that the mayor can be suspended from office for a month by the prefect, or for three months by the Minister of the Interior, and can be removed altogether by the President of the Republic.

The deliberative organ of the commune is the communal council, which varies in size from ten to thirty-six members, and is elected by universal suffrage for four years. Its authority extends to all communal affairs, except that it has nothing to do with the broad subject of police, although that is regarded for other purposes as a local matter. The statute on municipal government lays down the general principle that the decisions of the council on local affairs, when legally made, are conclusive without the approval of any superior administrative official; but in a subsequent section all the most important matters are specially excepted from the rule. The list of exceptions includes almost every financial measure, the construction of roads and

[1] The office is an honorary one, as the mayor receives no salary.

[2] Or subprefect.

[3] The mayor is not free from control in regard to other matters of local interest, for his accounts must be submitted for approval to the prefect, who can order the payment of any expense properly authorized if the mayor neglects to make it.

buildings, and the sale of communal property.[1] The council has, therefore, very much less power than might at first be supposed; and in order to guard against any attempt on its part to exceed these slender privileges, the prefect is given a discretionary authority to suspend it for a month, while the President of the Republic can dissolve it entirely and appoint a commission with limited powers to rule the commune for two months, when a new election must take place.

As in England, so also in France, much of the work of local administration is done by, and much of the credit therefor is due to, permanent officials little seen by the public; and chief among them to the secretary of the mayor, who in small communes is apt to be the village schoolmaster also.[2]

Paris

The general laws of local government already described do not, however, cover the whole field, because a dread of the explosive character and communistic tendencies of the democracy of Paris has prevented the capital from enjoying even the measure of liberty granted to other towns. The city has, indeed, a municipal council composed of eighty elected members and endowed with most of the usual powers, and a general council for the department, with limited powers, composed of these same eighty reinforced by eight suburban members; but the executive authority is entirely in the hands of the central government. It is lodged in part with the mayors of the twenty arrondissements, who are appointed directly by the President of the Republic; but chiefly with two prefects appointed in the same way. One

[1] The official who has power to approve the budget can also inscribe therein certain obligatory expenses.

[2] W. B. Munro, *The Governments of European Cities*, pp. 86–87, 90.

of these, the Prefect of the Seine, has most of the functions of the ordinary prefect, together with those of a central mayor; while the other, the Prefect of Police, has charge of the police, and is directly responsible to the Minister of the Interior.[1]

This sketch of local government in France shows how centralized the state still remains, what extensive supervision and control the administration keeps in its own hands, and how slight is the measure of real local autonomy, if measured by an Anglo-Saxon standard. In fact, the central government still makes itself continually and actively felt in local affairs, and this is for the ministers a great source of power, but also, as we shall see later, a cause of weakness.

Legislative Powers of the Executive

A third source of the enormous power of the ministers in France is the possession by the executive of authority that in an Anglo-Saxon country would be lodged with the legislature or the courts of law. This requires an explanation, for it involves some of the most interesting peculiarities of French, and, indeed, of continental political ideas.

Decrees and Ordinances

Let us take first the legislative authority of the executive in France. When an English or an American legislator drafts a statute he tries to cover all questions that can possibly arise. He goes into details and describes minutely the operation of the act, in order that every conceivable case may be expressly and distinctly provided for. He does

[1] In Lyons the control of the police is still entrusted to the Prefect of the Rhône; in Marseilles it is in charge of the Prefect of the Bouches-du-Rhône. In all cities of over 40,000 people the organization of the police is fixed by decree of the chief of the state, although the members of the force are appointed as in other communes.

this because there is no one who has power to remedy defects that may subsequently appear. If the law is vague or obscure, it can receive an authoritative interpretation only from the courts by the slow process of litigation. If it is incomplete, it must remain so until amended by a subsequent enactment. In some cases, it is true, an officer or board is given by statute power to make regulations, and the practice is becoming more frequent; but most Anglo-Saxons feel that the power is in its nature arbitrary, and ought not to be extended further than is necessary. And here it is important to distinguish between rules issued by the head of a department for the guidance of his subordinates and the regulations of which we are speaking. The former are merely directions given to the officials for the purpose of instructing them in their duties, and are binding on no one else. The right to issue them must belong, to some extent, to every one who has other persons under his orders, although they are used much more systematically in France than in the United States. The regulations with which we are concerned here are of quite a different kind, for they are binding on all citizens who may be affected by them, and have, in fact, the character of laws.

In America the authority to make regulations is delegated by the legislature cautiously, and apart from such an express delegation no officer of the government has power to issue any ordinances with the force of law. But in France all this is very different. Statutes that do not concern the rights of a man against his neighbor, that do not, in other words, form a part of the Civil Code, are often couched in general terms, and enunciate a principle which the executive is to carry out in detail.[1] Sometimes the President of

[1] Dupriez (ii, 377), after remarking this difference between English and French legislation, expresses a regret that the French Parliament has shown a tendency of late years to go more into details.

the Republic is expressly given power to make regulations, but even without any special authority he has a general power to make them for the purpose of completing the statutes, by virtue of his general duty to execute the laws.[1] Such regulations in France are called acts of secondary legislation, and the ordinances of the President in which they are contained are termed *décrets*. The power to make them is not, however, confined to the chief of the state. For matters of inferior gravity the laws often confer a similar authority on the ministers, the prefects, and even the mayors, and in this case the edicts are termed *arrêtés*, to distinguish them from the more solemn ordinances of the President.[2] The regulations cannot, of course, be contrary to law, or in excess of the authority of the official who issues them. If they are so, and infringe private rights, a process to have them annulled may be instituted before the administrative courts, and in certain limited cases the ordinary courts can also refuse to apply them.[3]

Appropriations

So much for the power of the executive to make law, but this does not exhaust its encroachments on what we have learned to regard as the province of the legislature, for it is less strictly held to the appropriations voted by the chambers than is the case with us. The *virements* (that is to say, the use for one purpose of appropriations voted for another), which were an abuse under the Empire, have,

[1] On the power to issue ordinances in France, see Aucoc, *Conférences*, §§ 52–57, 66, 91, 170; Ducrocq, *Cours*, §§ 61–66, 72–73, 109–110, 210–214; Goodnow, i, 85–87. Before issuing certain classes of ordinances the President must consult the Council of State, but he is not obliged to follow its advice.

[2] Lebon, *Frankreich*, p. 23; Aucoc, Ducrocq, *ubi cit.*

[3] Laferrière, *Traité de la Jur. Adm.*, liv. iii, ch. i, sec. ii; liv. vi; liv. vii, ch. i, sec. iv.

indeed, been abolished, except as between different items in the same chapter of the annual budget; but certain chapters are designated each year to which additions can be made by decree of the President issued with the consent of the council of ministers. Moreover, in urgent and unforeseen cases arising when Parliament is not in session, the government has power, by means of such a decree, not only to incur the expenses called for by the emergency, but also to open an extraordinary credit on its own authority and borrow the money that it needs.[1]

Judicial Powers of the Executive

One may, perhaps, be pardoned for dwelling at somewhat greater length on the judicial powers of the executive in France, both because they are so little understood by English-speaking people, and because their origin may be traced to a tradition which has its roots far back in the past.

The characteristic difference between the political history of England and that of France is to be found in the fact that the English, though influenced by each new spirit of the age, have never yielded entirely to its guidance, while the French have always thrown themselves into the current, and, adopting completely the dominant ideas of the time, have carried them to their logical results. Thus, in the Middle Ages, the feudal system never became fully developed in England as it did in France. Again, when absolute monarchy came into vogue, the British sovereign

[1] In both cases notice of the decree must be laid before the Chambers within fourteen days from their next meeting. (Lebon, *Frankreich*, p. 162.) In February, 1924, the Chambers by special act for that occasion gave the President an extraordinary power to increase taxes and to bring about administrative reforms by decree. It does not appear that this power was exercised. Cf. Rolland, "Le projet du 17 janvier et la question des décrets-lois," *Revue du droit public*, 1924, p. 42.

was not able to acquire the arbitrary power of the Bourbons. And, lastly, democracy made its way neither so rapidly nor so thoroughly on the north as on the south of the Channel. The result is that in France the institutions of any period have been adapted almost exclusively to the wants of the time in which they were produced, and in the succeeding age it has been thought necessary to destroy them and devise new ones more in harmony with the new conditions;[1] whereas in England there has been no need of such sweeping changes, and it has been possible to preserve in a modified form many of the most important features of the government. Hence the permanence and continuity of the political system.[2] Let us inquire how these facts have affected the development of judicial and administrative institutions in the two countries.

Early Royal Power in England

The Norman kings of England strove deliberately to check the growth of the feudal system, and their successors constantly followed the same policy. Now the essence of the feudal system consisted in the blending of public and private law by making all political relations depend on the tenure of land; and, in fact, according to the strict feudal theory, no man had direct relations with any superior except his immediate overlord. Every great vassal of the crown, therefore, had jurisdiction over all the tenants on his estate, which he exercised by holding a court of his own for the administration of justice among them.

[1] This is the more striking because the French are in some ways more conservative than the English, as, for example, in their retention of nominally public executions. M. Lebon truly remarks (*France as It Is*, p. 86): "People have no idea of the spirit of routine and conservatism which prevails in France."

[2] Cf. Freeman, *Growth of the English Constitution*, pp. 63–66.

The Judicial System in England

The English kings resisted this principle, and tried to bring their power to bear directly on all the people of the realm. For this purpose sheriffs were appointed to represent the crown in the counties, and, what was of more permanent importance, the gravest crimes, actions for the possession of land, and subsequently other matters, were brought within the jurisdiction of the *Curia Regis*.[1] As early as the reign of Henry I, moreover, royal officers were commissioned to travel about the country holding court, a practice which was renewed in a more systematic form by Henry II, and has continued with short interruptions to the present day.[2] The chief object of the early kings in sending out the itinerant justices, as they were called, was no doubt financial; for their duties consisted in assessing taxes, collecting fines for violation of the law, and administering justice, which was in itself a source of no small profit in the Middle Ages.[3] The functions of the justices in the collection of revenue grew, however, less and less prominent, but their administration of justice became of permanent importance, and in regard to this two tendencies were at work. In the first place, the royal judges adopted new methods of procedure and gradually developed the trial by jury, while the baronial

[1] See Pollock & Maitland, *History of English Law*, i, 85–87, and chs. v and vi.

[2] The institution of traveling judges was not new. It had been used by Charlemagne (Hallam, *Middle Ages*, ch. ii, part ii, 5), and a similar practice was employed by Alfred, Edgar, and Canute (Stubbs, *History of England*, xi, §§ 127, 134). On the itinerant justices, see Stubbs, *Ibid.*, xi, 127; xii, 141, 145, 150; xiii, 163; xv, 235; Gneist, *Englische Verfassungsgeschichte*, pp. 148, 224–228, 305 (note), 318–319, 447; Pollock & Maitland, i, 134, 149, 179; Franqueville, *Le Système Judiciaire de la Grande Bretagne*, i, 149 *et seq.* The royal duty of sending the justices in eyre is one of those insisted upon in Magna Charta, § 18.

[3] Stubbs, *Ibid.*, xi, 127.

courts clung to the ordeal and other barbaric forms of trial.[1] "The gladsome light of jurisprudence," as Coke called it, came with the king's courts, and hence it is not surprising that they supplanted the baronial courts, and in time drew before themselves all the important lawsuits. In the second place, the commissions which had at first been issued to high officials, barons, and knights, became confined to regular judges, and about the time of Edward I were given only to the members of the royal courts at Westminster.[2] The same body of judges, therefore, expounded the law in all parts of the realm; and hence England, alone among the countries of Europe, developed a uniform national justice called the Common Law.[3] The people naturally became attached to this law and boasted of the rights of Englishmen, while the courts that were the creators and guardians of the law became strong and respected.

The Administrative System

The very fact that the judicial branch of the government became so highly developed made the centralization of the administration unnecessary. At the time when the itinerant justices first went on circuit, administration in the modern sense was of course unknown, and such local affairs as needed attention were regulated by the shire moots and other local meetings.[4] The sheriff, indeed, represented the crown; but his powers were curtailed more and more, until, apart from his command of the military forces of the county, he became little more than an officer of the courts.[5]

[1] Cf. Stubbs, *History of England*, xiii, 164; Gneist, *Englische Verfassungsgeschichte*, p. 142.

[2] Gneist, *Ibid.*, p. 318; Stubbs, *Ibid.*, xv, 235.

[3] Cf. Hallam, *Middle Ages*, ch. viii, part ii, 3. [4] Stubbs, *Ibid.*, xv, 205.

[5] On the powers of the sheriff, see Stubbs, *Ibid.*, xiii, 163, xv, 204–207; Gneist, *Ibid.*, pp. 115–120, 297.

When the local administration grew more important, it was confided not to him, but to justices of the peace, who, though nominally selected by the king, were never strictly under his orders, and in time became almost completely independent, except for the purely judicial control exercised by the Court of King's Bench.[1]

The Royal Power in France

In England, therefore, the royal power came early into contact with the people all over the kingdom by means of the courts of law, and the judicial system became highly centralized; while the local administrative institutions developed slowly, and through them the king's authority was little felt. In France, the course of events was very different, for the royal power came into direct contact with the people at a much later date, and therefore in quite another form.

The Judicial System in France

When the feudal system became established, the great vassals set up their own courts and succeeded in excluding the royal judges from their fiefs, so that the direct jurisdiction of the crown became confined to the comparatively small part of the country which was included in the royal domain. Gradually, indeed, as the feudal system began to lose its strength, the king's jurisdiction encroached upon that of the vassals — a process which was carried on both by insisting on the right of appeal to the royal tribunals, and by reserving for the exclusive cognizance of the king's courts a somewhat indefinite class of cases known by the name of *cas royaux*.[2] But this process aroused serious re-

[1] Gneist, *Englische Verfassungsgeschichte*, pp. 298 *et seq.*, 468 *et seq.*

[2] Aubert, *Le Parlement de Paris de Phillippe le Bel à Charles VII*, ch. i, sec. i; *Hist. du Parl. de Paris, 1250–1515*, liv. ii, ch. i; Du Bois, *Hist. du*

sistance on the part of the territorial lords, and it was not until the sixteenth century that the crown judges possessed the universal authority they had obtained in England more than three hundred years earlier. So strong, in fact, did the local jealousy of the Parliament of Paris (the king's high court of justice) remain, that after the great fiefs fell into the hands of the crown, they were not placed under the jurisdiction of that tribunal, but were given independent parliaments of their own.[1] At the outbreak of the Revolution there were thirteen separate parliaments, so that every considerable province had a distinct body of tribunals.[2] Under these circumstances, the courts could not create a uniform national justice like the English Common Law; and although since the Revolution such a uniform system has been provided by the Code, this does not strengthen the hands of the judges, but has rather the opposite tendency. In the first place, it is not their work, and hence does not redound to their glory; and secondly, by weakening the force of precedent, it diminishes the importance of judicial decisions. This review of the history of the courts of law shows clearly why they have not attained in France the same power and authority as in Anglo-Saxon countries.[3]

The Administrative System

The French courts of law were weak because the royal authority did not come into direct contact with the people

Droit Criminel de la France, part i, ch. i; Esmein, *Hist. du Droit Français*, part i, tit. ii, ch. i; *Hist. de la Proc. Crim.*, part i, tit. i, ch. i, sec. ii; ch. ii, sec. i; Hallam, *Middle Ages*, ch. ii, part ii, 5.

[1] Du Bois, part i, ch. ii, § 2; Bastard d'Estang, *Les Parlements de France*, i, 36–38; Esmein, *Hist. du Droit Français*, tit. ii, ch. i, sec. i, § 2, v.

[2] For the dates of the creation of the provincial parliaments, which run from 1444 to 1775, see Bastard d'Estang, i, 189, note, and Esmein, *ubi supra*.

[3] Since the Revolution, the courts have, of course, been reorganized on a centralized basis.

at the time when public and private law were everywhere blended, when the tone of thought was peculiarly legal, and when political power was chiefly exercised in a judicial or semi-judicial form.[1] It made itself felt at a later date, and especially as the restorer of order after the anarchy caused by the Hundred Years' War. Its presence brought peace and prosperity, and naturally enough the organs which it employed acquired a high degree of vigor. Now, at this period, administration, in the modern sense, was becoming important, and as the royal authority came to be exercised by commissioners or intendants, who had, indeed, certain judicial powers, but whose functions were chiefly administrative,[2] the administration developed an influence and a strength which the courts had never attained. The administrative system became centralized, and grew to be the most important factor in the government.[3] All classes of the people looked to it for protection;[4] in fact, it took, to a great extent, the place which the judiciary filled in England and in those countries which had inherited the English principles.

Doctrine of the Separation of Powers

This difference in the relative authority of the courts and the administration was intensified — so far as the United States and France were concerned — by the political philosophy of the last century. Montesquieu, in his "Spirit of the Laws," proclaimed the importance of separating the executive, legislative, and judicial powers, and the maxim was

[1] On the relative importance attributed to law in the Middle Ages, and in later times, see Stubbs' chapters on the Characteristic Differences between Mediæval and Modern History, in his *Lectures on Med. and Mod. Hist.*

[2] Chéruel, *Dic. des Inst. de la France*, "Intendants des Provinces"; Esmein, *Hist. du Droit Français*, tit. ii, ch. v, § 2.

[3] Cf. De Tocqueville, *An. Reg. et la Rev.*, liv. ii, chs. ii, iii.

[4] De Tocqueville speaks of all classes as looking on the government as a special providence. *Ibid.*, ch. vi (7th ed., pp. 100–103).

eagerly accepted on both sides of the Atlantic, though in very different senses. Our ancestors, anxious to maintain the independence of the courts and the sacredness of private rights, took the principle to signify the necessity of so protecting the courts from the control or influence of the other branches of the government that they might be free to administer justice without regard to the official position of the litigants or the nature of the questions involved. They meant to preserve the English tradition that there is only one law of the land, to which every one is subject, from the humblest citizen to the highest officer. The French, on the other hand, had acquired no great passion for law, or for the rights of the individual, and did not admit a claim on the part of any one to delay or overturn the public interests in order to get his own grievances redressed. Moreover, they had seen the Parliament of Paris interfere with the government by refusing to register the edicts of the king; for although this tribunal had failed to acquire judicial supremacy, it had retained a good deal of political power, which it used during the years preceding the Revolution to resist innovations.[1] Such a power might not be disliked as a means of opposing an unpopular court party, but it could not be tolerated for a moment when the reins of government were seized by men who believed themselves commissioned to reform the world. The French statesmen, therefore, took Montesquieu's doctrine in the sense that the administration ought to be free to act for the public weal without let or hindrance from the courts of law. The Declaration of the Rights of Man proclaimed in 1789 that a community in which the separation of powers was not established had no constitution; and a statute of the next year, on the organization of the tribunals, gave effect to the maxim

[1] Cf. Edward J. Lowell, *The Eve of the French Revolution*, p. 105.

as it was understood in France by providing that the judges should not interfere in any way with the work of administrative authorities, or proceed against the officers of the government on account of their official acts.[1] The American and French applications of the doctrine of the separation of powers are both perfectly logical, but are based on different conceptions of the nature of law. The Anglo-Saxon draws no distinction between public and private law. To him all legal rights and duties of every kind form part of one universal system of positive law, and so far as the functions of public officials are not regulated by that law, they are purely matters of discretion. It follows that every legal question, whether it involves the power of a public officer or the construction of a private contract, comes before the ordinary courts.[2] In France, and in the other states of continental Europe, private law, or the regulation of the rights and duties of individuals among themselves, is treated as only one branch of jurisprudence; while public law, which deals with the principles of government and the relations of individuals to the state, is regarded as something of an entirely different kind. Of course every civilized government must strive to treat all its subjects fairly, and hence, in the course of administration, questions of justice must arise; but as these do not concern the rights of a man against his neighbor, they are not classed in France with private law. It is felt that, unlike questions of private law, they ought not to be decided solely by the application of abstract principles of justice between man and man, but must be considered from the broad standpoint of public policy.

[1] Aucoc, *Conférences*, part i, liv. i, ch. i; Bœuf, *Résumé*, part iv, sec. ii.

[2] This principle, like all others in Anglo-Saxon countries, is not carried out with absolute consistency. Thus the various commissions in America on railroads, interstate commerce, etc., partake of the nature of the French administrative tribunals.

Now the domain of the ordinary French courts is private law alone, and it is quite logical to regard any attempt on their part to judge administrative acts and thus pass on questions of public policy, as an attempt to go beyond their proper sphere of action and invade the province of the executive.[1]

The principle of withdrawing questions of public law from the ordinary courts was not new. It existed in practice under the old régime,[2] but was extended and systematized after the Revolution. The protection of officials from suit or prosecution was formally incorporated into the Constitution of the year VIII (1799), and remained in force until after the fall of Napoleon III, when it was repealed by a decree of the Government of the National Defense.[3] This decree was intended to remove all hindrances in the way of bringing government officials before the ordinary courts, but it had very little effect, because the Tribunal of Conflicts held that it applied only to the personal protection of officials, and did not affect the principle of the separation of powers, which, as understood in France, forbids the ordinary judges to pass upon the legality of official acts.[4]

The Administrative Courts

Questions of this kind, therefore, are still reserved exclusively for the administrative courts — tribunals created

[1] The French, like the Americans, have not applied their principles quite strictly, for Criminal Law ought to be a branch of Public Law (Aucoc Introd., § 1), but it has been placed in the charge of the ordinary courts.

[2] See Laferrière, *Traité*, liv. i; De Tocqueville, *An. Reg. et la Rev.*, book ii, ch. iv; Varagnac, "Le Conseil d'Etat," *Revue des Deux Mondes*, Aug. 15, 1892.

[3] Decree of Sept. 19, 1870.

[4] Arrêt, 30 Juillet, 1873, "Affaire Pélétier," Dalloz, *Jur. Gen.*, 1874, part iii, p. 5; Laferrière, *Traité*, liv. iii, ch. vii; Aucoc, *Conf.*, liv. v, ch. ii; Goodnow, *Comp. Adm. Law*, ii, 172–176.

especially for this purpose, and composed of officials in the service of the government. Criminal cases are, indeed, an exception to the rule,[1] but this is of no great practical importance, because as force is very sure to be on the side of the police, it is no real protection to the individual to know that he cannot be condemned for resistance; and on the other hand, the officials concerned run no risk of punishment for illegal acts committed in obedience to orders, because the government can easily manage to prevent their being brought to trial, and can pardon them if convicted. In France, therefore, there is one law for the citizen and another for the public official, and thus the executive is really independent of the judiciary. Nor is the danger of interference on the part of the administrative tribunals as great as it would be in the case of the ordinary judges, because the former can be controlled absolutely in case of necessity; and, in fact, they are so much a part of the administration itself that they fall into the province of the Interior and not that of Justice.[2] The independence of the ordinary judges is secured by a provision which prevents their removal, or transfer to another court, without the approval of the Court of Cassation, the final court of error.

[1] Laferrière, *Traité*, liv. iii, ch. vi. But even this exception is not absolute. See, also, a discussion of the subject in Dalloz, 1881, part iii, p. 17, note.

[2] It would be absurd to suppose that the government always extorts a favorable judgment. This was clearly shown in 1895, in a once famous case, which illustrates at the same time the degree of respect entertained for the decisions of the administrative courts. The Minister of the Interior and the railroads disagreed about the interpretation of a statute relating to the state guarantee of interest on the securities of the roads. The matter was brought before the Council of State, which decided in favor of the railroad. Thereupon the Minister of the Interior resigned, but the rest of the cabinet felt bound to abide by the decision. A discussion was, however, raised in the Chamber of Deputies, which in effect censured the ministers for submitting the matter to the Council of State, and thereby caused the cabinet to resign.

But the judges of the administrative courts enjoy no such protection, and can be removed by the President at any time.[1] The result is that, although a great mass of administrative law has slowly grown up from the decisions of these courts,[2] and personal liberty is much more respected than under the Empire, yet these courts themselves cannot be considered entirely judicial bodies, and are far from providing the rights of the citizen with a complete guarantee, at least where political questions are involved.[3]

[1] Aucoc, *Conf.*, i, 156–157; Bœuf, *Résumé*, pp. 39–40. The members of the Council of State who are qualified to sit as administrative judges are said to be always selected from the political friends of the government (Dupriez, *Les Ministres*, ii, 482–483).

[2] Unlike the civil law, the administrative law has never been codified, and indeed it could not be without destroying the element of discretion which is the reason for its existence. So far as it is not contained in statutes and ordinances, it has developed, like the English Common Law, by decision and precedent, and hence the sources for studying it are the reported cases and the writings of jurists such as those heretofore cited.

[3] Lebon, *France as It Is*, pp. 101–102; Goodnow (*Comp. Administrative Law*, ii, 220–221, 231) remarks that the administrative courts have shown themselves more favorable to private rights than the ordinary courts, and in some ways that is certainly true. In English-speaking countries a public official can be prosecuted criminally or sued for damages in the ordinary courts for any acts done without legal authority, whether his action was in the public interest or not. But he is not, as a rule, liable for acts authorized by law although his actual motives were bad or his discretionary powers misused. Nor is he usually liable for negligence in the performance of his duties. The state, on the other hand, cannot in theory be sued at all. In practice some means of maintaining claims against the state is almost always provided; but only for breaches of contract or to recover property, not for torts committed by officials.

In France acts of officials are classified in quite another way with very different results. First, there are personal acts, which involve grave personal misconduct or gross negligence on the part of the official, whether beyond or within his legal authority. For these, and these alone, he is liable in damages in the ordinary courts. Whatever he does in good faith for the public interest, whether within or beyond his legal authority, is an act of administration for which a remedy, if any, can be sought only against the state, and as a rule only in the administrative courts. Acts of this kind fall

It is not quite accurate to say that the ordinary courts can consider the validity of no official act; and, indeed, the line between the jurisdiction of the ordinary and the administrative courts does not follow any strictly logical principle.[1] Questions of indirect taxes, for example, and those relating to the lesser highways (*petite voirie*), come before the ordinary courts, while those arising under the direct

into three classes, called *actes de gestion*, *actes d'autorité* and *actes de gouvernement*. Broadly speaking, *actes de gestion* are acts done in the course of the regular administration of the public services, and the administrative courts tend to award compensation against the state for acts of this nature, not only when done wholly without legal authority, but also when there has been an abuse of that authority for improper purposes, or even negligence, as, for example, where a merchantman has been damaged by collision with a warship. (See a discussion of this whole subject in Hauriou, *La Gestion Administrative*.) *Actes d'autorité* are done in the exercise of the right of the state to issue commands to its citizens; and if such commands, orders or regulations are issued without legal authority, or involve an abuse of power, they can be annulled by a special procedure in the Council of State, which may incidentally award compensation. Finally *actes de gouvernement*, that is acts done for reasons of state with a view to the public safety, whether within the legal power of the government or not, lie beyond the jurisdiction both of the ordinary and the administrative courts; but there is a distinct tendency to restrict this principle to an ever narrowing field.

It is obvious that while the French system does not hold the official to a rigid conformity with law, it often gives compensation from the public treasury for tortious acts of officials for which in England or America there would be no redress, or only an action against an official who might be unable to pay the damages.

It is somewhat curious in this connection to observe that French writers often assert the inability of an ordinary court to protect the public against illegal ordinances, because it can only decide the case at bar, whereas an administrative court has power to annul the ordinance altogether; a remark which shows an entire failure to comprehend the force of precedent in the Anglo-Saxon judicial system. (See, for example, Varagnac, "Le Conseil d'Etat," *Revue des Deux Mondes*, Sept. 15, 1892, pp. 290–291.)

A systematic comparison of the English and French systems may be found in Professor Dicey's *Law of the Constitution*, and especially in chapter xii.

[1] On this subject, see Laferrière's great work, *Traité de la Jurisdiction Administrative*.

taxes, or relating to the greater highways (*grande voirie*), come before the administrative tribunals. The competence of the various administrative courts is no less complicated. The prefect and the mayor have each a very limited jurisdiction. That of the prefectorial councils, on the other hand, is very considerable, although as a matter of fact these councils are occupied almost altogether with questions of taxes, and in these, as a rule, they follow the advice of the assessors.[1] But by far the most important administrative court is the Council of State, which has a special section or committee to attend to the *contentieux*, as this class of litigation is called. The Council not only hears appeals from the lower administrative tribunals, but has also original jurisdiction in many important cases; and, in fact, recent practice is tending to establish the principle that the Council of State is the judge of all administrative matters in the absence of special provisions of law. The number of cases brought before it is very large, and has increased so rapidly that the section for the *contentieux* is badly in arrears, and it has been proposed to create a second section to relieve the pressure.[2]

The Court of Conflicts

It is evident that with two sets of courts, neither of which is superior to the other, disputes about jurisdiction must constantly arise. Such is in fact the case, and a special tribunal has been appointed to determine these disputes, or conflicts as they are called.[3] It is composed of the Minister of Justice, of three members of the highest court of

[1] Vicomte d'Avenel, "La Réforme Administrative — La Justice," *Revue des Deux Mondes*, June 1, 1889, p. 596.

[2] For the number of cases decided by the administrative courts, see the tables (through 1886) in Laferrière, liv. i, ch. v.

[3] Aucoc, *Conf.*, vol. i, § 406; Bœuf, *Résumé*, 15th ed., pp. 542–543.

law, the Court of Cassation, of three members of the highest administrative court, the Council of State (each of these sets being selected by their own court), and of two other persons elected by the foregoing seven. All the members are chosen for three years, except the Minister of Justice. This officer has the right to preside, and thus his presence gives to the administration a majority in the tribunal. A striking example of the working of the system was presented in 1880, when the government issued decrees for the suppression of all monastic orders not authorized by law. There seems to have been grave doubt about the legality of the decrees, and the victims brought suits in the ordinary courts in several parts of France. Most of these courts held that they were authorized to entertain the suits, and in some cases they went so far as to order the persons who had been expelled from their establishments to be restored to possession pending the trial;[1] but the government raised the question of jurisdiction, and the Tribunal of Conflicts decided that the ordinary courts were not competent to deal with the matter.[2] It is a significant fact, which seemed to show a lack of confidence in the impartiality of the administrative courts, that the persons injured did not bring the question of the legality of the decrees before the Council of State.[3]

When an ordinary court has assumed jurisdiction of a case, the question of competence can be raised only by the

[1] Some of the decisions to this effect may be found in Dalloz, *Jurisprudence Générale*, 1880, part iii, pp. 57–62, and 80. In the note to page 57 there is a list of some of the other similar decisions and a discussion of the law.

[2] Arrêts de Nov. 4, 5, 13, 17, and 20; Dalloz, 1880, part iii, pp. 121–132. These cases are reported with unusual fullness.

[3] At least I can find no decision on the subject by the Council of State reported in Dalloz. For criticisms on the conduct of the government, see Jules Simon, *Dieu, Patrie, Liberté*, ch. vi; and Channes, *Nos Fautes*, letters of July 12 and Oct. 27, 1880.

prefect, and not by a party, for the principle that the ordinary courts cannot determine the legality of official acts is intended solely as a protection to the administration.[1]

The State of Siege

Such is the legal position of the administration in ordinary times, but in case of war or insurrection it can be given far greater powers, by a proclamation of the state of siege. This can be made by statute, or if Parliament is not in session it can be made by the President; but in that case, in order to meet the danger of a *coup d'état*, which is ever present to the eyes of Frenchmen, it is provided that the chambers shall meet as of right in two days.[2] Within the district covered by the state of siege, the military courts can be given criminal jurisdiction, and can punish any offenses against the safety of the Republic or the general peace. They can search houses by day or night, expel from the district any non-residents, seize all arms, and forbid any publications or meetings which are liable to disturb the public order.[3]

Effect on the Executive

I have dwelt at some length on what, from an Anglo-Saxon point of view, may well be called the legislative and judicial powers of the executive in France, because these things are entirely foreign to our own political ideas and experience, and because they exist in some form in almost every country on the continent of Europe.

When we consider the paternal character of the government, the centralization of the state, and the large share

[1] Aucoc, *Conf.*, vol. i, § 404; Bœuf, *Résumé*, 15th ed., p. 547.
[2] Law of April 3, 1878, Poudra et Pierre, § 79.
[3] Poudra et Pierre, § 76, gives the text of the law.

of authority vested in the executive department, we cannot fail to see that the ministers in whose hands this vast power is lodged must be either very strong or very weak. If they are able to wield it as they please, and are really free to carry out their own policy, they must be far stronger than any officer or body in Great Britain, and immeasurably stronger than any in our federal republic. But, on the other hand, the very immensity and pervasiveness of their power, the fact that it touches closely every interest in the country, renders them liable to pressure from all sides. It becomes important for every one to influence their action, provided he can get a standpoint from which to bring a pressure to bear. This standpoint is furnished by the Chamber of Deputies, for the existence of the ministry depends on the votes of that body. The greater, therefore, the power of the minister, and the more numerous the favors he is able to bestow, the fiercer will be the struggle for them, and the less will he be free to pursue his own policy, untrammeled by deputies, whose votes he must win if he would remain in office. A Frenchman, who is eminent as a student of political philosophy, and has at the same time great practical experience in politics, once remarked to the author, "We have the organization of an empire with the forms of a republic."[1] The French administrative system is, indeed, designed for an empire, but when arbitrary power falls under the control of popular leaders, it is liable to be used for personal and party ends; for, as a keen observer has truly said, the defect of democracy lies in the fact that it is nobody's business to look after the interests of the public.

[1] Gneist expresses the same idea: "*Es entsteht der unvermittelte Gegensatz einer republikanisch gedachten Verfassung mit einer absolutistisch organisirten Verwaltung.*" (Die Preussiche Kreisordnung, p. 7.)

CHAPTER VII

FRANCE: PARTIES

Parties in Popular Government

For more than a hundred years it has been the habit to talk of government by the people, and the expression is, perhaps, more freely used to-day than ever before; yet a superficial glance at the history of democracy ought to be enough to convince us that in a great nation the people as a whole do not and cannot really govern. The fact is that we are ruled by parties, whose action is more or less modified, but never completely directed, by public opinion. Rousseau, indeed, shadowed forth a great truth, when he declared that no community could be capable of a general will — or, as we should express it, of a true public opinion — where parties or sects prevailed; [1] and our own experience of popular government will quite justify us in saying that public opinion is always more or less warped by the existence of party ties. A study of the nature and development of parties is, therefore, one of the most important that can occupy the student of political philosophy to-day. Among Anglo-Saxon peoples, who have had a far longer experience in self-government than most other races, there are usually two great parties which dispute for mastery in the state. But in the countries on the continent of Europe this is not usually true. We there find a number of parties or groups which are independent of each other to a greater or less extent, and form coalitions, sometimes of a most unnatural kind, to support or oppose the government of the hour. Now the existence of

[1] *Contrat Social*, liv. ii, ch. iii.

several distinct political groups has a decisive influence on the working of the parliamentary system. Let us consider this question a moment.

The Parliamentary System and Parties

In describing the English government the relation of political parties to the parliamentary system was discussed, but it may not be out of place here to recall what was there pointed out.

When a country with a parliamentary form of government is divided into two hostile parties, the ministers who lead the majority of the popular chamber must of course belong all to one of those parties, or all to the other, and even when party strife is less bitter, and parties have begun to break up, experience has proved that the best policy for the ministers is to support each other and stand or fall together. Lord Melbourne is reported to have exclaimed at a cabinet meeting, after a discussion on the question of changing the duty on corn, "Now is it to lower the price of corn, or is n't it? It is not much matter which we say, but mind, we must all say the same." [1] The statesmanship implied by this remark may not have been of the highest kind, but the politics were sound, and showed a knowledge of the great secret of success. It is, indeed, an axiom in politics that, except under very peculiar circumstances,[2] coalition ministries are short-lived compared with homogeneous ones, whose members are in cordial sympathy with each other. Now so long as the ministers cling together, every member of the House must consider the cabinet and its policy as a whole, and make up his mind whether he will support it, or help to turn it out and put in an entirely different set of

[1] Bagehot, *English Constitution*, p. 16, note.

[2] Like those brought about by this war.

ministers with another policy. He cannot support the cabinet on certain questions and oppose it on others. He must sacrifice details to the general question. The result is that the members either group themselves about the ministers, and vote with them through thick and thin, or else they attach themselves to an opposition party, whose object is to turn out the cabinet, and then take office itself and carry on a different policy. The normal condition of the parliamentary system, therefore, among a people sufficiently free from prejudices to group themselves naturally, and possessing enough experience to know that the practical and attainable, and not the ideal, is the true aim in politics, is a division into two parties, each of which is ready to take office whenever the other loses its majority. This has been true in England in ordinary times, and although of late years it has been frequently asserted that the two great parties in the House of Commons are destined to come to an end, and be replaced by a number of independent groups, the prophecy does not accord with experience. It is based on mistaking a temporary political condition for a permanent one. The sudden interjection of the question of Home Rule into English politics caused a new party division on fresh lines, which necessarily broke up the traditional associations of public life, and threw both parties into a state of confusion for many years. On one side, the opponents of the measure were composed of men whose habits of thought had been most diverse; while the followers of Mr. Gladstone, on the other side, included many Liberals who were forced, against their will, to subordinate to Home Rule other matters which they deemed more important. In short, the introduction of a new issue shattered the old basis of cleavage, and it is not surprising that new, solidified parties were not formed in an instant. Moreover it may be noticed that

although the Liberal groups in the House of Commons have often talked freely of their dissensions, they have acted as a single party, and have supported the cabinet by their votes, with astonishing fidelity.

A division into two parties is not only the normal result of the parliamentary system, but also an essential condition of its success. Suppose, for example, that a third party, like that of the Irish Home Rulers under Parnell, is formed, and places some one specific issue above all others, with the determination of voting against any cabinet which does not yield to its demands on that point; and suppose this body becomes large enough to hold the balance of power. If, in such a case, the two old parties do not make a coalition, or one of them does not absorb the new group by making concessions, no ministry will be able to secure a majority. Every cabinet will be overthrown as soon as it is formed, and parliamentary government will be an impossibility. Now suppose that the third party, instead of being implacably hostile to both the others, is willing for a time to tolerate a cabinet from one of them — is willing, in short, to allow the ministers to retain office provided they give no offense. Under these circumstances parliamentary government is not impossible, but it is extremely difficult. The ministers are compelled to ride two horses at once. They must try to conciliate two inharmonious bodies of men, on pain of defeat if either of them becomes hostile; and hence their tenure is unstable and their course necessarily timid. Now the larger the number of discordant groups that form the majority, the harder the task of pleasing them all, and the more feeble and unstable the position of the cabinet. Nor is the difficulty removed by giving portfolios to the members of the several groups; for even if this reduces the labor of satisfying the parties, it adds that of maintaining an accord among the

ministers themselves, and entails the proverbial weakness of coalition governments. A cabinet which depends for its existence on the votes of the Chamber can pursue a consistent policy with firmness and effect only when it can rely for support on a compact and faithful majority; and therefore the parliamentary system will give the country a strong and efficient government only in case the majority consists of a single party. But this is not all. The opposition must also be united. So long as the ministry stands, the composition of the minority is, indeed, of little consequence; but when that minority becomes a majority, it must in turn be a single party, or the weakness of a coalition ministry cannot be avoided. It follows that a division of the Chamber into two parties, and two parties only, is necessary in order that the parliamentary form of government should permanently produce good results.

Many Groups in France

In France the parliamentary system has not worked smoothly, because this condition has not been fulfilled.[1] The various groups of Monarchists and Bonapartists formed the traditional party of the Reactionaries, or, as it was more commonly called, the Right.[2] The rest of the members have

[1] This is recognized by many French writers, e.g., Lamy, *La République en 1883;* Paul Laffitte, *Le Suffrage Universel et la Régime Parlementaire*, part i, ch. iii; Saleilles, in the *Annals of the American Academy of Political Science*, July, 1895, pp. 57, 64, 65. But the reason for the existence of a number of groups in France seems to be only partially understood. The most clear-sighted writer on this subject is Dupriez. (See *Les Ministres*, ii, 363–365, 370–371, and 386–395.)

[2] For readers unfamiliar with European politics it may perhaps be necessary to explain the meaning of the terms Right and Left, as they are used all over the Continent. In England a broad aisle runs from the Speaker's desk through the middle of the House of Commons to the main entrance opposite, and the benches of the members are arranged parallel to this aisle and facing it. The Ministry sit on the front bench at the right of the Speaker

been supporters of the Republic, and have formed nominally a single party, but they have really been held together only by a desire to maintain the existing form of government, and have seldom acted in concert except when they thought that threatened. They have always comprised men of every shade of opinion, from Conservatives to Radicals and even Socialists, and would speedily have broken up into completely hostile parties, if it had not been for the fear of the Reactionaries. Even under the pressure of this fear their cohesion has been very slight, for they have been divided into a number of groups with organizations which, though never either complete or durable, have been quite separate; and again, these groups have often been subdivided into still smaller groups, whose members were loosely held together by similarity of opinions or desire for advancement, usually under the standard of some chief, who held, or hoped to win, a place in the cabinet. In fact, the parties in the Chamber of Deputies have presented such a series of dissolving views that it is very difficult to draw an intelligible picture of them.[1]

(the so-called Treasury Bench), their supporters taking seats behind and alongside of them, while the Opposition sit on the left side of the House. The Liberals and Conservatives, therefore, are each to be found sometimes on one side of the House and sometimes on the other, according as their party is in power or not. But on the Continent the seats are arranged, as a rule, like those of a theatre, as in our legislative bodies, the ministers usually sitting immediately in front of the Speaker or President, on a bench which sometimes faces him and sometimes looks the other way, while the conservative members sit on the President's right, the more liberal next to these, and the radical on his left. As this arrangement is permanent, the words Right and Left have come to be generally used for Conservative and Liberal; and the different groups are often designated by their position in the Chamber, as the Right, the Centre, and the Left Centre, the Left, or the Extreme Left.

[1] The line of cleavage between the Monarchists and Republicans has now ceased to be of much importance. All the larger factions now profess to be republican. These factions are constantly gaining or losing members so that it is almost impossible to state their exact numerical strength at any

During the struggle with MacMahon, the Republicans had been solidly united, but the danger had not passed very long before the Radicals began to show themselves independent. They soon became quite ready to upset any ministry that offended them, and in fact cabinet after cabinet was overthrown by the votes of the Right and the Extreme Left. Even Gambetta, who had striven to keep the Republicans together, did not escape this fate, in spite of his immense popularity both in the country and in the Parliament. He did not consent to form a ministry until November, 1881; and after holding office only two months and a half, he was forced to resign by the refusal of the Chamber to introduce the *scrutin de liste* for the election of deputies. He lived only till the end of the year, and his death deprived France of a great popular leader. After his fall, politics followed the old course, and there passed across the stage a series of short-lived ministries.

Blocs

Within the last few years there has indeed been a nearer approach to a division of the deputies into two great parties — one Conservative and the other Radical — than at any other time since the birth of the Republic. Between

moment. Sometimes it happens, indeed, that a member of the Chamber may profess to belong to two political groups at the same time. No single faction ever forms a majority of the Chamber, so that a coalition is always necessary. The following groups at present make up the Chamber of Deputies, but their names afford, for the most part, no indication of the principles to which they give allegiance: Conservatives, including the Orleanists; Liberal Action; Progressist Republicans; Republicans of the Left; Radical Socialists; Radical Left; Republican Socialists; Socialists; and Communists. The first three groups make up the Right; the last six usually make up the Left; but some of the smaller groups keep shifting from side to side. For a description of French parties, cf. Léon Jacques, *Les Partis Politiques sous la III République;* Buell, *Contemporary French Politics*, chs. i–iv; Soltau, *French Political Parties To-day*.

1885 and 1900 parliamentary government by the various ministries was usually carried on by a combination of the two liberal elements, the Opportunists and the Intransigeants, known as "Republican concentration." Between 1901 and the outbreak of the World War, the groups of the Left tended to fuse into a Bloc which controlled the government. At the beginning of the war all the parties associated themselves in a Sacred Union; even the Unified Socialists deserting their traditional principle not to sit in a bourgeois ministry, and participating along with the rest in the Viviani government. Within this last group, however, an element soon arose which attacked the participation, as well as the war itself; and in 1918 it obtained control of the group, which thereupon withdrew from the Sacred Union.[1]

At the election of 1919, the moderate and conservative Republicans united in a National Bloc to resist Bolshevism and the dictatorship of the proletariat which the extreme Socialists were advocating. So vigorous was this combination that the Bloc carried 366 seats, while the combined Radicals and Socialists had only 244. The defeat made the radical parties realize that if they were to gain control of the government a firmer combination was needed. Hence they formed the Cartel des Gauches, which was so successful at the election of 1924 that M. Herriot, the leader of the Radical party, became prime minister; and he was supported not only by his own group but also by the Socialists. But he did not remain many months in office, for his policy of withdrawing the embassy at the Vatican, which had been reinstated after a lapse of seventeen years, and of bringing the position of the Catholic Church in Alsace-Lorraine more nearly into accord with the situation in France, provoked opposition and helped to bring about his defeat in the Cham-

[1] Cf. Buell, ch. iii.

ber of Deputies. The succeeding Painlevé cabinet, composed of members of the Left, declared vaguely for qualified representation at the Vatican, and Herriot's policy in Alsace-Lorraine was not pursued. Thus in spite of the formation of these Conservative and Radical blocs the history of successive ministries shows clearly with how little sharpness the lines between parties are drawn, and how little the members of the various groups that at any moment compose the majority can be relied upon to support the cabinet. In short, there has been an approach, but as yet not a very near approach, to the system of two parties, and the numerous detached groups still remain the basis of parliamentary life.

Let us now consider the reasons for the subdivisions of the Chamber into a number of groups. And first we must look at a source of political dissensions with which we are not familiar at home, but which is to be found in almost every nation in Europe.

The Lack of Political Consensus

Few persons ever ask themselves why the bodies of men who assemble every year at the State House or the Capitol have power to make laws. It is not because they have more personal force or wisdom or virtue than any one else. A congress of scientific men may contain all these qualities in greater abundance, but it cannot change a single line in the statute-book. Is it because they represent the people? But we all know that they occasionally pass laws which the people do not want, and yet we obey those laws without hesitation. Moreover, this answer only pushes the question one step further back, for why should we obey the people? A few centuries ago nobody recognized any right on the part of the people to govern or misgovern themselves as they

chose, or rather on the part of the majority to impose their will on the minority; and in many countries of the world no such right is recognized to-day. How does it happen that there is not a class of men among us who think that the legislature does not fairly represent the people, or who think that the right to vote ought to be limited by a certain educational or property qualification, or by the profession of a certain creed; and why does not some such class of men get up a rival legislature ? The fact is that, while we may differ in regard to the ideal form of government, we are all of one mind on the question of what government is entitled to our actual allegiance, and we are determined to yield to that government our obedience and support. In short, a common understanding or consensus in regard to the basis and form of the government is so universal here that we feel as if it were natural and inevitable; but in all countries this is not so. Such a consensus is the foundation of all political authority, of all law and order; and it is easy to see that if it were seriously questioned, the position of the government would be shaken, that if it were destroyed, the country would be plunged into a state of anarchy.[1] Now persons who do not accept the consensus on which the political authority of the day is based are termed in France Irreconcilables. Men of this sort do not admit the rightfulness of the existing government; and, although they may submit to it for the moment, their object is to effect a revolution by peaceful, if not by violent, means. Hence their position is essentially different from that of all other parties, for these aim only at directing the policy of the government within constitutional limits, and can be entrusted with power without danger to the fundamental institutions of the nation, while the Irrec-

[1] The revolution in Russia and its sequel is a forcible illustration of this truth.

oncilables, on the contrary, would use their power to upset those institutions, and therefore cannot be suffered to get control of the state. They form an opposition that is incapable of taking office, and so present a disturbing element, which in a parliamentary form of government throws the whole system out of gear.[1]

Another thing to be noticed about a consensus is that it cannot be created artificially, but must be the result of a slow growth and long traditions. Its essence lies in the fact that it is unconscious. The people of the United States, for example, could not, by agreement, give to a dictator the power of the Czar of Russia, for except in the presence of imminent danger he would have no authority unless the people believed in his inherent right to rule, and the people cannot make themselves believe in any such right simply by agreeing to do so. The foundation of government is faith, not reason, and the faith of a people is not vital unless they have been born with it.[2] Now, in France, the Revolution of 1789 destroyed all faith in the political institutions of the past, and was unable to substitute anything else. It did, indeed, give birth to a code of law, and to an administrative

[1] It is impossible to draw a sharp line between what is revolutionary and what is not; or to define exactly an Irreconcilable. The matter depends in fact upon the opinion of the community. Thus, before 1886, Home Rule might fairly be said to have been revolutionary, and the Irish Home Rulers to have been Irreconcilables; but after Mr. Gladstone made Home Rule a practical question in English politics, it would have been absurd to call Parnell's followers Irreconcilables.

[2] Curiously enough an exception to this principle, and almost a solitary one, is to be found in the history of the United States. The generation that framed the Constitution looked upon that document as very imperfect, but they clung to it tenaciously as the only defense against national dismemberment, and in order to make it popular, they praised it beyond their own belief in its merits. This effort to force themselves to admire the Constitution was marvelously successful, and resulted, in the next generation, in a worship of the Constitution, of which its framers never dreamed.

system, both of which have taken a strong hold on the nation, and have survived every change in the government. These have been the permanent elements in France, and the only ones that acquired the blind force of tradition. They have supplied a machinery unshaken by political upheavals, and it is this that has made it possible for the country to pass through so many revolutions without falling into a state of anarchy.[1] But in regard to institutions of a purely political character, the nation has not been so fortunate, for the governments that followed the Revolution were not sufficiently durable to lay even a foundation for a general consensus, and the lack of continuity so thoroughly prevented the steady growth of opinion that only of late years have the people as a whole succeeded in acquiring a political creed. The result is that every form of government that has existed in France has had its partisans, who were irreconcilable under every other; while the great mass of the middle classes and the peasants had no strong political convictions, and were ready to support any government that maintained order. Thus the two Empires bequeathed to the Republic the group of Bonapartists, whereas the Monarchists were a legacy from the old régime and the reign of Louis Philippe. At present, the Right having accepted the Republic, and the irreconcilable elements disappearing or becoming insignificant, one of the chief obstacles to the formation of two great parties, one Conservative and the other Radical, has been removed.[2]

But this is only one of several obstacles, and the others are so great that it will probably be a long time before the sys-

[1] Cf. Laffitte, pp. 208, 209.

[2] As a result of the Conservative landslide in the elections of 1919, five members of *L'Action française*, the Orleanist party, won seats in the Chamber, including the famous Léon Daudet. The latter lost his seat in the election of 1924.

tem of groups breaks down in France, or is replaced by that of two political parties.

French Political Opinions Theoretical

In the first place, the Frenchman has been theoretical rather than practical in politics. He has tended to pursue an ideal, striving to realize his conception of a perfect form of society, and is reluctant to give up any part of it for the sake of attaining so much as lies within his reach. Such a tendency naturally gives rise to a number of groups, each with a separate ideal, and each unwilling to make the sacrifice that is necessary for a fusion into a great party. In short, the intensity of political sentiment has tended to prevent the development of real political issues. To many Frenchmen, public questions have an absolute rather than a relative or practical bearing, and therefore they care more for principles and opinions than for facts. This tendency is shown in the programmes of the candidates, which are apt to be philosophic documents instead of statements of concrete policy, and, although published at great length, often give a comparatively small idea of the position of the author on the immediate questions of the day.[1] It is shown also in the newspapers, and the use that is made of them. An Anglo-Saxon reads the newspapers chiefly for information about current events, and as all the papers contain very much the same news, he habitually reads only one. But the French papers contain far less news, and as the Frenchman reads them largely for the sake of the editorials, he commonly reads several in order to compare the opinions they express.

It is partly on account of this mental attitude, and partly owing to the absence of the habit of self-government, and the

[1] Lebon, *France as It Is*, p. 85.

lack of sympathy between different parts of the country, that the French have not organized readily in politics. This is the more curious because in military matters they organize more easily than any other people in the world; and it is no doubt the military instinct, as well as the want of confidence in their own power of political organization, that disposes them to seek a leader and follow him blindly after he has won their confidence.[1] The inability to organize readily in politics has this striking result, that vehement as some of the groups are, and passionate as is their attachment to their creeds, they have made until recently little effort to realize their aims by associating together their supporters in all parts of the country for concerted action.

In the past, there may be said to have been no national party organizations in France. Within recent years, however, this statement has not been true of at least two parties, the Unified Socialists and the Radical Socialists. In 1899 the French Socialists divided over the famous Millerand case. M. Millerand had been appointed Minister of Commerce in the Waldeck-Rousseau Ministry, to which some of his fellow Socialists objected on the ground that a Socialist should not collaborate in any way with a bourgeois government. Those who followed M. Millerand eventually became "Republican Socialists"; while those who opposed him became known as the "Unified Socialists." The latter party adopted a concrete platform in January, 1905, stating that the Socialist party "is a party of class which has for its object the socialization of the means of production and exchange," an object that makes it, "not a party of reform, but a party of class struggle and of revolution." The representatives of the party in Parliament form an independent group opposing all the political fac-

[1] Cf. Channes, Letter of Aug. 22, 1885.

tions of the bourgeoisie. "The Socialist group in Parliament," they declare, "must therefore refuse to the government all the means which assure the domination of the bourgeoisie and its maintenance in power; it must consequently refuse military credits, credits for colonial conquest, secret funds, and indeed the entire budget." The extreme principle of non-coöperation has not been consistently followed, the last example being the Socialist support of the Herriot ministry. This body of Socialists has not, however, allowed any of its leaders to become ministers in a bourgeois government.

The Unified Socialists have not only a programme but also an effective, well-disciplined organization. Their deputies must belong to the group in the Chamber. Every candidate for office upon their ticket must sign a declaration promising to observe the principles and follow the tactics of the party. The group in Parliament presents an annual report to the party congress; and a delegation from the group forms part of its National Council. Between congresses, the party is directed by this Council, composed of the deputies, delegates from the department federations, and an Administrative Commission. The Council is the supreme body of the party when the Congress is not in session, meeting ordinarily every two months. The Administrative Commission, composed of twenty-two members, is a sort of executive committee of the Council. While the enrolled membership of this party is only a little over 100,000, its candidates have at some elections polled as much as 1,700,000 votes.

The Radical Socialist party also has a platform, known as the Programme of Nancy, adopted in 1907, and embracing a complete outline of political, economic, and social reforms. It has a series of committees reaching into every commune,

canton, and arrondissement, which are federated into departmental and regional groups. An Annual Congress is held, while an Executive Committee with a large membership, and smaller committees, supervise the work of the party. At the Congress of Pau in 1913 it was decided that each Radical must belong to the Radical group in the Chamber if he was to receive party support.

Although the Unified and the Radical Socialists are the only parties to maintain strict control over their deputies, practically all the parties of France now have programmes and a semblance of organization. Of the parties of the Right, that of Liberal Action is the best organized, having forty federations and 2,000 committees throughout the country.

Still, party organization is not far advanced in France, and a multiplicity of groups yet prevails because of certain minor French institutions which were referred to in the beginning of the preceding chapter as inconsistent with the parliamentary system. Three of these have been especially important — the method of electing deputies, the system of committees in the chambers, and the practice of interpellations.

The Method of electing Deputies

In France the *scrutin de liste*, or the election of all the deputies from a department on one ticket, and the *scrutin d'arrondissement*, or the use of single electoral districts, have prevailed alternately, the former being in force at the present day. Before 1919, an absolute majority of all the votes cast was required for election under both systems. If there were more than two candidates in the field, and no one of them got such a majority, a second vote, called the *ballotage*, was taken two weeks later, and at this a plurality was

enough to elect.[1] Now it is clear that such a procedure encouraged each political group to nominate a separate candidate for the first ballot. Suppose, for example, that there were Reactionary and Moderate Republican candidates in the field, and that the Radicals preferred the Republican to the Reactionary, still they had nothing to lose by running a candidate of their own on the first ballot, for if the Reactionary could poll more votes than both his rivals combined, he would be elected in any event; if he could not, he would not be elected whether the Radicals put up a candidate of their own or not. Thus the old electoral system tended to prevent the formation of two great consolidated parties; the evil from which parliamentary government in France has suffered.

The electoral law of 1919 changed this by introducing a partial system of proportional representation and abolishing the ballotage. Only one polling is now held for the election of the deputies. Each department is entitled to one seat in the Chamber for every 75,000 inhabitants; none, however, having less than three. Candidates group themselves on party lists, so that if, for example, a department is entitled to six seats, each party may have six names on its list. Any candidate who obtains votes equal to an absolute majority of all the ballots cast is elected, and to any seats not thus filled the principle of proportional representation is applied as follows. An electoral quotient is computed by dividing the number of ballots cast by the number of seats.

[1] Law of June 16, 1885, Art. 5. (This article was not repealed by the Law of Feb. 13, 1889.) By the same article a quarter as many votes as there were voters registered was required for election on the first ballot.

According to strict parliamentary usage, the term *ballotage* is applied only to cases where, at the final trial, the voting is confined by law to the two names highest on the poll at the preceding ballot, but the word is popularly used for any final ballot where a plurality is decisive.

Thus if 60,000 ballots were cast and there were six seats, the electoral quotient would be 10,000. The number of seats to which each party is entitled is determined by the average vote of its candidates divided by the electoral quotient; so that if the six candidates of List A poll an average of 30,000 votes apiece, the party would obtain three seats, and the three highest candidates on its list would be elected. The act, of course, has also provisions for dealing with fractions.

The abolition of the ballotage and the adoption of proportional representation have had an important effect on party development; for under the provisions of this law parties having a compact and disciplined organization have a better chance to win. If, for example, the Conservative parties in Paris should poll 92,000 ballots on a single list, while the Socialist party polled 70,000, all of the Conservative candidates would be elected because they had each received a majority of the ballots cast. But if the Conservative vote were divided between two equal groups, this advantage would be lost, and the Socialists would gain a majority of the seats. Such conditions virtually forced the Conservative parties into a National Bloc, as a result of which they won many victories over their Socialist opponents in the Elections of 1919. In fact, some of the groups objected to the law because it compels them to give up their independence in order to win seats, while under the old system it was possible for them to obtain isolated victories. Consequently a number of attempts have been made in the French parliament to return to the old system of *scrutin d'arrondissement* and *ballotage;* while other attempts have been made to adopt a more highly developed form of proportional representation.[1]

[1] Bonnet, "La Réforme Électorale," *Revue Politique et Parlementaire* (1922), vol. iii, p. 221; cf. three editorials on "La question de la représenta-

The Committees in the Chambers

The system of committees in the chambers is a still more important matter. Each of the French chambers is divided into sections called *bureaux*, of which there are nine in the Senate and eleven in the Chamber of Deputies.[1] The bureaux are of equal size, and every member of the Chamber belongs to one and only one of them, the division being made afresh every month by lot. This is a very old institution in France, a relic of a time before parliamentary government had been thought of; for not only do we find it in the Assembly of Notables and the States General that met on the eve of the Revolution,[2] but it existed in the ecclesiastical assemblies, and to some extent in the States General, at a much earlier date.[3] The use of the lot is, indeed, a survival from the Middle Ages, when it was a common method of

tion proportionnelle intégrale," *Europe Nouvelle*, April 23, 28, May 5, 1923. In May, 1919, the Chamber adopted a measure for woman suffrage, which the Senate defeated. In order to encourage large families, plural voting, one vote for each child, has also been proposed. Buell, p. 149. For a discussion of compulsory voting, cf. a report by Professor Barthelemy, No. 4738, July, 1922, reprinted in *Revue du Droit Public*, January, 1923, p. 101.

[1] For the constitution of the bureaux and the election of the committees, see Poudra et Pierre, liv. v, chs. ii and iii; Pierre, *Traité de Droit Politique, Electoral et Parliamentaire*, 4th ed. with supp., book vi, § 2. Reginald Dickinson, *Summary of the Constitution and Procedure of Foreign Parliaments*, 2d ed., pp. 393–366.

These bureaux must not be confounded with the Bureau of the Chamber, which consists of the President, the Vice-Presidents, and the Secretaries. The habit in France of using the same word with different meanings is liable to be the source of no little confusion to the students of her institutions.

[2] Poudra et Pierre, § 976.

[3] Sciout, *Histoire de la Constitution Civile du Clergé*, p. 36. Judge Francis C. Lowell pointed out to me that the States General which met at Tours in 1484 was divided into six sections by provinces. See a journal of this body by Jehan Masselin, in the *Collection de Documents inédits sur l'Histoire de France publiés par ordre du Roi*, Paris, 1835, pp. 66–73.

selecting officials.[1] Before 1910 the bureaux had three functions. The first was that of making a preliminary examination of the credentials of members of the Chamber, which were divided among them for the purpose. The second was that of holding a preliminary discussion on bills brought into the Chamber, before they were referred to a committee; but as a matter of fact this discussion was perfunctory, and was limited to finding out in a general way what members of the bureau favored or opposed the bill.[2] The third and most important function of the bureaux was the election of committees, for with some exceptions all the committees of both chambers were selected in the same way. Each of the bureaux chose one of its own members, and the persons so elected together constituted the committee. In the case of the more important committees it was sometimes desirable to have a larger number of members, and if so the bureaux chose in like manner two or even three members apiece — the chamber in each case directing, by its rules or by special vote, the number of members to be elected.

Until 1902 almost all the committees of the Chamber were temporary and chosen in the manner just described. This haphazard way of doing business became so defective that in 1902 the Chamber adopted a new rule which provides for twenty standing committees with forty-four members apiece.[3] In 1921 the Senate adopted the system, creating twelve standing committees. The committees last throughout the session, receive all bills coming within their

[1] The chief relic of the lot left in Anglo-Saxon institutions is, of course, its use in the selection of the jury — a survival which is due to the fact already pointed out, that the English royal justice developed at an early period.

[2] Dupriez, ii, 404.

[3] Réglement de la Chambre, Arts. 17–19.

field, unless the Chamber orders otherwise, and must within four months make a report on every bill submitted to them. Temporary committees may still be established, either by the bureaux or by direct vote of the Chamber.

Moreover, since 1910 the election of the permanent committees has been taken away from the bureaux and transferred to the party groups according to the principle of proportional representation, so that if a group contains one-sixth of the membership of the Chamber it is entitled to one-sixth of the members on each of the committees. Three days before the formal election of the committees, the leaders of the groups arrange the membership, and the list so formed is assumed to be adopted by the Chamber unless fifty deputies register in writing their opposition to the selection.[1] Thus while the old system of electing committees by bureaux drawn by lot tended to impede party organization, this new system is frankly based on the party groupings in the Chamber. It is another indication that France is recognizing more consciously the function of party in legislation.

Nevertheless — and this is the main point to notice — the French system of committees, although changed during the last twenty-five years, is inconsistent with the English form of parliamentary government. Although the committees now tend to reflect the party complexion of the Chamber, they still place ministers at a grave disadvantage. In England, a cabinet officer has every important bill in charge from the time it is introduced until its adoption. It is referred to a committee only after its principle has been accepted by the House; and in committee the minister can

[1] Art. 12, Réglement. For a discussion, cf. T. S. Chien, *Parliamentary Committees, A Study in Comparative Governments*, Harvard University Thesis; Lindsay Rogers, "Parliamentary Commissions in France," *Political Science Quarterly*, xxxviii, pp. 413, 602.

make use of the whips to prevent amendments he does not approve. In France, on the other hand, as Mr. Sait puts it, "The bill goes immediately before a committee which meets in secret without the guidance of a minister, and which still has charge of the bill when it is brought before the Chamber. For the moment the Minister is overshadowed. Not he, but the reporter explains and defends the bill, accepts or rejects proposed amendments. Of course, the minister may interpose at any time; the premier himself may force his views upon the Chamber by demanding a vote of confidence. Nevertheless the formal procedure does create a divided leadership. The cabinet, instead of defending a measure of its own, may at times be in the position of persuading the Chamber to reject the proposals of the committee. . . ." [1] While disagreements between cabinet and committee are exceptions rather than the rule, party government suffers from this division of authority.

In the past, the most domineering and vexatious committee was that on the budget. This committee took pride in criticising the estimates and making them over, both as regards income and expenditures, while each member exerted himself to add appropriations for the benefit of his own constituents, so that when the report was finally made the government could not always recognize its own work. The procedure on the budget in England stood in strong contrast to the French system. There the authority of the ministers is expressly protected by the standing order of the House of Commons to the effect that no petition or motion for the expenditure of the public revenue shall be entertained except on the recommendation of the crown; and in accordance with a firmly established practice proposals for national taxes originate only with the government. So

[1] *Government and Politics of France*, p. 211.

long as the budget committee exercised freely its own initiative, the French ministry suffered in dignity and authority. Instead of compelling a majority to act solidly together under the leadership of the cabinet as in England, the system allowed any deputy to use his place on a committee as a means of urging his own personal views.

For the last twenty-five years, however, the budget or finance committee has used its right of initiative with moderation, unless with the approval of the government. An example of this occurred in 1905 when the committee stated that, while it believed the war estimates to be inadequate, it could not properly ask the Chamber to increase them without the consent of the ministry.[1] The Committee now persistently refuses to make special reports on private member bills calling for supplementary appropriations. Moreover, in 1900 the Chamber adopted the famous Berthelot resolution which in its present form provides that no amendment to the budget which would create new offices or pensions or increase existing salaries, etc., can be made.[2] A further reform abolishing "riders" was adopted in 1919, for the Rules now provide that no proposal not directly affecting receipts or expenses can be introduced into the finance act.[3]

Thus in a number of respects the committee system in France has been so improved that, while it still impedes the ministry, it does not obstruct the development of parties or parliamentary government to the same extent as it did a quarter of a century ago.

Interpellations

The habit of addressing interpellations to the ministers has also a bearing on the stability of the cabinet and the

[1] Sait, p. 227. [2] Rule 102, Réglement. [3] Rule 102.

subdivision of parties; for it cannot be repeated too often that these things are inseparable. The existence of the ministry depends on the support of the majority, and if that is compact and harmonious, the ministry will be strong and durable; if not, it will be feeble and short-lived. The converse is also true. The cohesive force that unites the majority is loyalty to the cabinet and submission to its guidance; but if the cabinets are weak, or are constantly overthrown at short intervals, they cannot acquire the authority that is necessary to lead the majority and weld it into a single party. This is especially the case when the crises occur over matters which are not of vital consequence to the bulk of the followers of the government, and yet that is precisely the state of things that interpellations tend to create.

It is of the essence of parliamentary government that the majority should support the ministers so long, and only so long, as it approves of their course, and this means their course as a whole, in administration as well as in legislation; for the parliament, having the fate of ministers in its hands, holds them responsible for all their acts, and has gradually extended its supervision over the whole field of government. Now a parliament can judge of the legislative policy of the cabinet by the bills it introduces, but it is not so easy to get the information necessary for a sound opinion on the efficiency of the administration. It is largely to satisfy this need that a practice has grown up in the House of Commons of asking the ministers questions, which may relate to any conceivable subject, and afford a means of putting the cabinet through a very searching examination. Of course the privilege is freely used to harass the government, but the answer is not followed by a general debate, or by a vote, except in the unusual case where a motion to adjourn is

made for the purpose of bringing the matter under discussion.[1]

A similar practice has been adopted in France, and questions are addressed to the ministers by members who really want information. But another kind of question has also developed, which is used not to get information, but to call the cabinet to account, and force the Chamber to pass judgment upon its conduct. This is the interpellation.[2] In form it is similar to the question, but the procedure in the two cases is quite different. A question can be addressed to a minister only with his consent, whereas the interpellation is a matter of right, which any deputy may exercise, without regard to the wishes of the cabinet. The time, moreover, when it shall be made is fixed by the Chamber itself, and except in matters relating to foreign affairs, the date cannot be set more than a month ahead. But by far the most important difference consists in the fact that the author of a question can alone reply to the minister, no further discussion being permitted, and no motion being in order; while an interpellation is followed both by a general debate and by motions. These are in the form of motions to pass to the

[1] The motion to adjourn is the only one that is in order, and since 1882 its use has been carefully limited. May, *Parl. Practice*, 10th ed., p. 240 *et seq.* In this form or some other a vote is occasionally taken on a single detail of administration. The most famous instances of late years have been the affair of Miss Cass in 1887, where the House of Commons expressed its disapproval of the government's refusal to make an inquiry by voting to adjourn, but where no member of the cabinet felt obliged to resign; and the defeat of Lord Rosebery's ministry in 1895. In the last case a motion was made to reduce the salary of the Secretary of State for War, in order to draw attention to the lack of a sufficient supply of ammunition, and the motion was carried; but there can be no doubt that the cabinet would not have resigned if its position had not already been hopeless.

In the House of Lords questions can always be debated. May, p. 206.

[2] For the rules and practice in the case of questions, see Poudra et Pierre, liv. vii., ch. iii., and Supp. 1879–80, § 1539. In the case of interpellations, *id.*, liv. vii., ch. iv.

order of the day, and may be orders of the day pure and simple, as they are called, which contain no expression of opinion, or they may be what are termed orders of the day with a motive, such as "the Chamber, approving the declarations of the Government, passes to the order of the day." Several orders of this kind are often moved, and they are put to vote in succession. The ministers select one of them (usually one proposed by their friends for the purpose), and declare that they will accept that. If it is rejected by the Chamber, or if a hostile order of the day is adopted, and the matter is thought to be of sufficient importance, the cabinet resigns. This is a very common way of upsetting a ministry, but it is one which puts the cabinet in a position of great disadvantage, for a government would be superhuman that never made mistakes, and yet here is a method by which any of its acts can be brought before the Chamber, and a vote forced on the question whether it made a mistake or not. Moreover, members of the Opposition are given a chance to employ their ingenuity in framing orders of the day so as to catch the votes of those deputies who are in sympathy with the cabinet, but cannot approve of the act in question.[1]

[1] A very good example of the various shades of praise or blame that may be expressed by orders of the day can be found in the *Journal Officiel* for July 9, 1893. There had been a riot in Paris, which had not been suppressed without violence and even bloodshed. The police were accused of wanton brutality, and an interpellation on the subject was debated in the Chamber of Deputies on July 8. The order of the day quoted in the text, "The Chamber, approving the declarations of the government, passes to the order of the day," was adopted, but the following were also moved:

"The Chamber, disapproving the acts of brutality of which the police have been guilty, requests the government to give to the police instructions and orders more conformable to the laws of justice and humanity, and passes to the order of the day."

"The Chamber, disapproving the proceedings of the police, passes to the order of the day."

"The Chamber, approving the declarations of the government, and per-

Now if adverse votes in the Chamber are to be followed by the resignation of the cabinet and the formation of a new one, it is evident that to secure the proper stability and permanence in the ministry, such votes ought to be taken only on measures of really great importance, or on questions that involve the whole policy and conduct of the administration. It is evident also that they ought not to be taken hastily, or under excitement, but only after the Chamber has deliberately made up its mind that it disapproves of the cabinet and that the country would on the whole be benefited by a change of ministers. The reverse of all this is true of the French system of interpellations, and a cabinet which in the morning sees no danger ahead, and enjoys the confidence of

suaded that it will take measures to prevent the violence of the police officials, passes to the order of the day."

"The Chamber, censuring the policy of provocation and reaction on the part of the government, passes to the order of the day."

"The Chamber, hoping that the government will give a prompt and legitimate satisfaction to public opinion, passes to the order of the day."

"Considering that the government has acknowledged from the tribune that its policy has caused in Paris 'sad occurrences,' 'deeds that must certainly be regretted,' and 'some acts of brutality,' the Chamber takes notice of the admission of the President of the Council, demands that the exercise of power shall be inspired by the indefeasible sentiments of justice, of foresight, and of humanity, and passes to the order of the day."

"The Chamber, convinced that the government of the Republic ought to make the law respected and maintain order, approving the declarations of the government, passes to the order of the day."

"The Chamber, regretting the acts of violence on the part of the police, and taking notice of the declarations of the government, passes to the order of the day."

"The Chamber, approving the declaration whereby the government has announced its desire to put an end to the practices and habits of the police which have been pointed out, passes to the order of the day."

"The Chamber, convinced of the necessity of causing the laws to be respected by all citizens, passes to the order of the day."

In this case, by voting priority for the first of these motions and adopting it, the Chamber avoided the snares prepared for it by the ingenious wording of the others.

the Chamber and the nation, may be upset before nightfall by a vote provoked in a moment of excitement on a matter of secondary importance.

The frequency with which interpellations are used to upset the cabinet may be judged by the fact that out of the twenty-one ministries that resigned in consequence of a vote of the Chamber of Deputies during the years 1879–1896, ten went to pieces on account of orders of the day moved after an interpellation, or in the course of debate,[1] and since 1896 the proportion has remained substantially the same. Several of these orders covered, indeed, the general policy of the cabinet, but others — like the one relating to the attendance of the employees of the state railroads at a congress of labor unions, which occasioned the resignation of Casimir-Perier's ministry in May, 1894 — had no such broad significance. Moreover, the production of actual cabinet crises is by no means the whole evil caused by interpellations. The enfeebling of the authority of the ministers by hostile votes about affairs on which they do not feel bound to stake their office is, perhaps, an even more serious matter, for no cabinet can retain the prestige that is necessary to lead the chambers in a parliamentary government, if it is to be constantly censured and put in a minority even in questions of detail. The ministers are not obliged, it is true, to answer interpellations,[2] but unless some reason of state can be given for refusing, such as that an answer would prejudice diplomatic

[1] Cf. Haucour, *Gouvernements et ministères de la III^e^ république française (1870–1893)*; Muel, *Gouvernements, ministères et constitutions de la France depuis cent ans.*

Among the resignations brought about in this way, I have counted that of Rouvier's cabinet in 1887, although this was caused not by the vote of an order of the day, but by the refusal of the Chamber to postpone the debate on an interpellation, and although the cabinet continued to hold office for a few days pending the resignation of President Grévy.

[2] Poudra et Pierre, § 1555.

negotiations, a refusal would amount to a confession of error, or would indicate a desire to conceal the fact, and would weaken very much the position of the cabinet.

The large part that interpellations play in French politics is shown by the fact that they arouse more popular interest than the speeches on great measures;[1] and, indeed, the most valuable quality for a minister to possess is a ready tact and quick wit in answering them.[2]

Except in a despotism, the interpellation followed by a motion expressing the judgment of the Chamber is a purely vicious institution. It furnishes the politicians with an admirable opportunity for a display of parliamentary fireworks; but it is hard to see how, under any form of popular government, it could fail to be mischievous, or serve any useful purpose that would not be much better accomplished by a question followed by no motion and no vote. The plausible suggestion has been made that the administration, being free from supervision by the courts of law, can be brought to account for its acts only in this way;[3] but surely the same result could be as well accomplished by the simpler process of the question, and it is hard to see any reason for imperiling the existence or the prestige of the cabinet to rectify some matter of trifling consequence.

Jealousy and Distrust of the Ministers

The practice arose from the fact that, owing to the immense power of the executive in France, and the frequency with which that power has been used despotically, the legislature has acquired the habit of looking on the cabinet officers as natural enemies, to be attacked and harassed as

[1] Simon, *Nos Hommes d'Etat*, p. 27.

[2] Simon, *Dieu, Patrie, Liberté*, p. 379.

[3] See Vicomte d'Avenel, "La Réforme Administrative — La Justice," *Revue des Deux Mondes*, June 1, 1889, pp. 595–596.

much as possible.[1] But such a view, which is defensible enough when the ministers are independent of the parliament, becomes irrational when they are responsible to it, and bound to resign on an adverse vote.

Strange as it may seem, the development of interpellations has coincided very closely with that of parliamentary government;[2] and, in fact, the French regard the privilege as one of the main bulwarks of political liberty. It is this same feeling of antagonism to the government that gave rise to the overweening power of the committees in the Chamber, and their desire to usurp the functions of the ministers. The extent to which this feeling is carried by the Radicals is shown by the proposal made some years ago to divide the whole Chamber into a small number of permanent grand committees, such as existed in 1848, in order

[1] M. Dupriez, in the work already cited (ii. 253 *et seq.*), has explained the strength of this feeling by a most valuable study of the history of the relations between the ministers and the legislature in France. He points out that it existed at the outbreak of the Revolution, for the *cahiers* or statements of grievances prepared by the meetings of electors held to choose members of the States General in 1789 express a widespread dislike and distrust of all ministers as such. He then shows how the Constituent Assembly tried to curtail the power of the ministers, and reduce their functions to a simple execution of its own orders. It is unnecessary here to follow the subject in detail. It is enough to remark that a large part of the political history of France since the Revolution is filled with struggles for power between the executive and the legislature, in which the former has twice won a complete victory, and deprived the representatives of the people of all influence in the state. Under these circumstances the suspicion and jealousy of the cabinet shown by Liberal statesmen is not surprising.

[2] The practice was first regularly established at the accession of Louis Philippe, the period when cabinets became thoroughly responsible to the Chamber; and it was freely used during the Republic of 1848. After the *Coup d'Etat* it was, of course, abolished; but toward the end of his reign Napoleon III, as a part of his concessions to the demand for parliamentary institutions, gradually restored the right of interpellation. Finally, under the present Republic the right has been used more frequently than ever before. See Poudra et Pierre, §§ 1544–1549; Dupriez, ii. 305, 317–318.

to bring the ministers even more completely under the control of the deputies; the ideal of the Extreme Radicals being the revolutionary convention, which drew all the powers of the state as directly and absolutely as possible into its own hands.[1] The less violent Republicans are, no doubt, very far from accepting any such ideal, but still they cannot shake out of their minds the spirit of hostility to the administration which has been nurtured by long periods of absolute rule. They fail to realize that when the ministry becomes responsible to the deputies, the relations between the executive and the legislature are radically changed. The parliamentary system requires an entire harmony, a cordial sympathy, and a close coöperation between the ministers and the Chamber; and to the obligation on the part of the cabinet to resign when the majority withdraws its approval, there corresponds a duty on the part of the majority to support the ministers heartily so long as they are retained in office. Parliamentary government, therefore, cannot be really successful in France until a spirit of mutual confidence between the cabinet and the Chamber replaces the jealousy and distrust that now prevail.

A comparison of the political history of France and England during corresponding years shows to what extent the French procedure has interfered with discipline and disintegrated the parties. In England the Liberals came into power after the elections of 1892 with a small majority in the House of Commons; and, although the supporters of the government were far from harmonious, were, in fact, jealous of each other and interested in quite different measures, the perfection of the parliamentary machinery enabled the ministers to keep their followers together and maintain themselves in

[1] Cf. De la Berge, "Les Grands Comités Parlementaires," *Revue des Deux Mondes*, Dec. 1, 1889.

office for three years. In France, on the other hand, the elections of 1893 produced a majority which, if even smaller, was far more homogeneous; and indeed, if we compare the position of some of the outlying groups with that of certain sections of the English Liberal party, it is fair to say that the majority in France was both larger and more homogeneous. Yet within two years this majority suffered three cabinets which represented it to be overthrown on interpellations about matters of secondary importance, and finally became so thoroughly disorganized that it lost control of the situation altogether.

Results of the Condition of Parties

We have surveyed some of the causes of the condition of political parties in France. Let us now trace a few of its results. In the earlier years, the presence of the Reactionaries deprived cabinet crises of the significance they might otherwise possess. The defeat of the ministers did not mean the advent to power of a different party, because there was no other party capable of forming a cabinet — not the Reactionaries, for they were irreconcilable and hostile to the Republic, and of late years have been far too few in numbers; nor those Republicans who helped the Right to turn out the ministers, because by themselves they did not constitute a majority of the Chamber. Although the Reactionaries have now practically disappeared the condition of the groups is still such that a new cabinet is obliged to seek its support largely in the ranks of the defeated minority, and hence is usually formed from very much the same material as its predecessor. In fact, a number of the old ministers have generally kept their places, at most an attempt being made to gain a little more support from the Right or Left by

giving one or two additional portfolios to the Moderates, Radicals, or Socialists.[1]

When a ministry falls, the parliamentary cards are shuffled, a few that have become too unpopular or too prominent are removed, and a new deal takes place. So true is this, that out of the twenty-four ministries that succeeded each other from the time President MacMahon appointed a Republican cabinet in 1877 until 1897, only three contained none of the retiring ministers, the average proportion of members retained being about two-fifths;[2] and since the Sarrien ministry of 1906 eleven out of the sixteen prime ministers have been members of the outgoing cabinets.[3]

Now, the fact that the fall of the cabinet does not involve a change of party has two important effects: by removing the fear that a hostile opposition will come to power, it destroys the chief motive for discipline among the majority;[4] and by making the Chamber feel that a change of ministers is not a matter of vital consequence, it encourages that body to turn them out with rash indifference. The result is that the cabinets are extremely short-lived; during the forty years between 1875 and 1914 there were fifty of them, so that the average duration of a French cabinet was a little less than ten months.[5] The same fact explains, moreover, the persistence of the system of interpellations, for if a change of ministry does not imply a different programme, there is no self-evident impropriety in overthrowing a cabi-

[1] Lebon, *France as It Is*, p. 94.

[2] Cf. Haucour, *Gouv. et Min.;* Muel, *Gouv., Min. et Const.;* Dupriez, ii. 338, 343. The three exceptions were the cabinets of Brisson in 1885, Bourgeois in 1895, and Méline in 1896.

[3] Sait, p. 94.

[4] This is very clearly pointed out by Dupriez, *Les Ministres*, ii. 390.

[5] I have not counted the reappointment of the Dupuy ministry on the election of Casimir-Perier to the presidency as the formation of a new cabinet.

net on a question that does not involve a radical condemnation of its policy.

The Cabinet a Coalition and therefore Weak

The subdivision of the Republican party into separate groups has also an important bearing on the character of the ministry. Instead of representing a united party, the cabinet must usually rely for support on a number of these groups, and the portfolios must be so distributed as to conciliate enough of them to form a majority of the Chamber.[1] As a rule, therefore, the cabinet is in reality the result of a coalition, and suffers from the evils to which bodies of that kind are subject. The members tend to become rivals rather than comrades, and each of them is a little inclined to think less of the common interests of the cabinet than of his own future prospects when the combination breaks up.[2] Such a government, moreover, is essentially weak, for it cannot afford to refuse the demands of any group whose defection may be fatal to its existence.[3] The ministers are not at the head of a great party that is bound to follow their lead, and yet they must secure the votes of the Chamber or they cannot remain in office. Hence they must seek support as best they may, and as they cannot rule the majority, they are constrained to follow it;[4] or rather they are forced to conciliate the various groups, and, as the members of the groups themselves are loosely held together, they must grant favors to the individual deputies in order to secure their votes. This is not a new feature in French politics. It is

[1] Only on two or three occasions has the cabinet been supported by a group which has contained by itself anything like a majority of the deputies.

[2] Cf. Dupriez, ii. 348–349. Lebon, *France as It Is*, p. 85, speaks of the never-ending struggles for mastery within the cabinet.

[3] Cf. Dupriez, ii. 347–348, 434–435.

[4] Cf. Simon, *Nos Hommes d'Etat*, ch. vii, p. iii.

said that during the reign of Louis Philippe, the government kept a regular account with each deputy, showing his votes in the Chamber on one side, and the favors he had been granted on the other, so that he could expect no indulgence if the balance were against him.[1] Nor has the cause of the evil changed. It is the same under the Third Republic that it was under the Monarchy of July, for in both cases the lack of great national parties with definite programmes has made the satisfaction of local and personal interests a necessity.

Political Use of Offices

We are, unfortunately, only too familiar in this country with the doctrine that to the victors belong the spoils. In France we find the same thing, although it has not been acknowledged so openly, and was once disguised under the name of *épuration*, or the purification of the administration from the enemies of the Republic. The practice of turning political foes out of office and substituting one's friends seems to have begun during President MacMahon's contest with the Chamber, when the Reactionary party dismissed a large number of officials who had served under former cabinets.[2] After the Right had been overthrown in 1877, there arose a cry that the Republic ought not to be administered by men who did not sympathize with it, and would naturally throw their influence against it; but although the fear of danger to the form of government was no doubt genuine at first, the cry became before long an excuse for a hunt after office.[3] In speaking of this subject, however, it must be

[1] Hello, *Du Régime Constitutionnel*, quoted by Minghetti, *I Partiti Politici*, p. 101; and see G. Lowes Dickinson, *Revolution and Reaction in Modern France*, pp. 118–120.

[2] See Channes, pp. 18–19, 231–232.

[3] See the remarkable little book by Edmond Scherer, *La Démocratie et la France;* Channes, *Nos Fautes* (*passim*); Simon, *Nos Hommes d'Etat*,

remembered that France is not divided into two great parties which succeed each other in power, and hence a wholesale change of public servants, such as has often taken place after a presidential election in the United States, does not occur. The process is continuous, but slower and less thorough. On the other hand, the evil in France is by no means limited to office-seeking, for owing to the immense power vested in the government, the favors which the deputies demand and exact as the price of their votes extend over a vast field. Nor do they show any false modesty about making their desires known. They do not hesitate to invade the executive offices, and meddle directly in the conduct of affairs.[1] Even the prefect, who has the principal charge of local administration, is not free from their interference. He is liable to lose his place if he offends the Republican deputies from his department, and is therefore obliged to pay court to them and follow their lead. In short, the prefect has become, to a great extent, the tool of the deputies; and his dependence is increased by the fact that nowadays he does not usually remain in office long enough to acquire a thorough knowledge of the local wants, or to exercise a strong personal influence. I do not mean that he has become corrupt; far from it. The level of integrity among French officials appears to be extremely high, and though wedded to routine, their efficiency is great;[2] but the discretion in their hands is enormous, and in using it they must take care not to displease his Majesty the Deputy.[3]

pp. 114–115, and ch. vi, p. ii; Dupriez, ii. 502–509; Lamy, *La République en 1883*, pp. 6–8, 22; and see a highly colored account by Hurlbert, "The Outlook in France," *Fortnightly Review*, lv. 347.

[1] Dupriez, ii. 435, 507–508; Channes, pp. 253–256; Lamy, pp. 21–26; Laffitte, *Le Suffrage Universel*, pp. 54–59.

[2] Simon, "Stability of the French Republic," *The Forum*, x. 383.

[3] Cf. Channes, Letter of Oct. 1, 1884; Laffitte, pp. 56–58; Dupriez, ii. 471–472, 506–509.

Deputies and their Committees

Of course the deputies do not wield this immense influence to forward their own private ends alone. They are representatives, and must use their position for the benefit of the persons they represent. But whom do they represent? The people at large? No representative ever really does that. So far as he is actuated by purely conscientious motives he represents his own ideas of right, and for the rest he represents primarily the men who have elected him, and to whom he must look for help and votes in the next campaign. In some countries this means the party, and those classes that hang on the skirts of the party and may be prevailed upon to fall into line. But in France parties are not strongly organized, and hence we must consider how candidates are nominated there. The government, at the present day, does not put forward official candidates of its own, as was commonly done during the Second Empire;[1] and, indeed, it is not supposed to take an active part in elections. This last principle is not strictly observed, for the administrative officials at times exert no little influence in important campaigns, and the government is said to have spent a good deal of money to defeat Boulanger in 1889. Still there is nothing resembling the control of elections under Napoleon III, and especially there is no interference with the selection of candidates, this matter being left to the spontaneous movement of the voters themselves. The usual method of proceeding is as follows: a number of men in active politics in a commune, or what we should call the wire-pullers, form themselves into a self-elected committee, the members usually belonging to liberal or semi-liberal

[1] Simon, *Dieu, Patrie, Liberté*, p. 372.

professions, and very commonly holding advanced views which are apt to go with political activity in France. The committees or their representatives meet together to form an assembly, which prepares the programme, nominates the candidate, and proclaims him as the candidate of the party.[1] These self-constituted committees, therefore, have the nomination entirely in their own hands; and, except in the larger cities, a candidate owes his position much to local influence and personal interests.[2] Sometimes he has won prominence by a clever speech at a local meeting. Sometimes he has earned gratitude by services rendered in his profession, or otherwise.[3]

The active campaign is carried on by means of placards posted on walls and fences, which make a great show, but win few votes; and what is far more effective, by means of newspapers and the stump.[4] The stump, curiously enough, is used very little except by the candidates themselves,[5] who constantly speak at political rallies, of late years frequently holding joint debates.[6]

It is a common saying that if the committees want anything they exert a pressure on the deputy, who in his turn

[1] Simon, *Nos Hommes d'Etat*, pp. 17–25; Scherer, *La Démocratie et la France*, pp. 22–24; Reinach, *La Politique Opportuniste*, pp. 186–188; Laffitte, *op. cit.*, pp. 64–69.

[2] Simon, *Nos Hommes d'Etat*, pp. 24–25.

[3] Chaudordy, *La France en 1889*, p. 96.

[4] Alfred Naquet, "The French Electoral System," *North American Review*, clv. 468–470.

[5] Theodore Stanton, supplement to the article of Alfred Naquet, p. 473.

[6] Alfred Naquet, *Ibid.* The newspapers at election time are full of accounts of these meetings for joint debate, called *Réunions publiques contradictoires*. Direct bribery of voters, though not unknown, seems to be rare, but the complaint that elections have been getting a good deal more expensive of late years is general. Naquet, *Ibid.*; Reinach, pp. 189–190; Simon, *Dieu, Patrie, Liberté*, p. 373; *Souviens toi du Deux Décembre*, p. 91.

brings a pressure to bear on the ministers; and hence it has been a common saying that the electoral committees rule the deputies, and the deputies rule the government.[1]

The Deputies and their Constituents

The deputy must always consider other people besides the wire-pullers. He must try to strengthen his general popularity throughout his district. He is, indeed, expected to look after the political business of his constituents, and is a regular channel for the presentation of grievances and the distribution of favors; one of the complaints most commonly heard in France being that the deputies represent local and personal interests rather than national ones. But even this does not end his responsibilities. The traditions of centralization which make all France look to Paris for guidance, and the habit of paternal government that makes men turn to the state for aid, have caused many people to regard the deputy as a kind of universal business agent for his district at the capital, and burden him with all sorts of private matters in addition to his heavy public duties. Sometimes this is carried to an extent that is positively ludicrous. Many years ago a couple of deputies gave an account at a public dinner of the letters they had received from their districts. Some constitutents wanted their representative to go shopping for them; others asked him to consult a physician in their behalf; and more than one begged him to procure a wet nurse, hearing that this could be done better in Paris than in the provinces.[2] Is it to be

[1] Channes, *Nos Fautes*, pp. 238–239; and see Scherer, *La Démocratie et la France*, p. 27; Simon, *Dieu, Patrie, Liberté*, p. 378.

For this reason one frequently hears it said that the deputies do not see the real people, but only their own political dependents. Channes, p. 38; Simon, *Souviens toi du Deux Décembre*, pp. 165–166.

[2] This is quoted by Scherer in *La Démocratie et la France*, pp. 34–35.

wondered that the French deputy should bend under the weight of his responsibilities?

If I seem to have drawn a somewhat dark picture of the position of the deputy, I do not want to be understood as implying that all deputies are alike; for many of them are men of high character, who will not yield to the temptation and pressure with which they are surrounded. My object is simply to describe a tendency; to point out a defect in the French political system, and to show clearly the characteristic evils which that defect cannot fail to develop. The famous scandals about the bribery of deputies in connection with the Panama Canal, with which the newspapers were filled for three months, cast a dismal light over public life in France, and although at first the credulous no doubt exaggerated the extent of the corruption, still there was fire enough under the smoke to show what baleful influences haunt the corridors of the Palais Bourbon.

Prospects of the Republic

Before closing, let us consider for a moment the political prospects of the country. The generous enthusiasm that greeted the Republic at the outset has faded away, and even its most ardent advocates have found to their sorrow that it has not brought the promised millennium. Such a feeling of disappointment is not surprising. On the contrary, it might have been surely predicted, for in every form of government that has existed in France since the Revolution the period of enthusiasm has been followed by one of disenchantment, and to this latter stage the Republic has come in the natural course of events. Now this period may well be looked upon as crucial, because as yet no form of government in France has been able to live through it. After a political system has lasted about half a generation, the country has always be-

come disgusted with it, torn it down, and set up another — a course that has made any steady progress in public life impossible. The effect has, in fact, been very much like that which would be produced by a man who should constantly root out his crops before they came to maturity, and sow his field with new and different seed.

The reason for such a state of things is not hard to find. Since the Revolution every form of government in France has been the expression or outward sign of a definite set of political opinions. So close, indeed, has the connection been between the two, that it has been impossible for men to conceive of one without the other, and therefore a fundamental change of opinion has always involved a change in the form of government. Any one who studies the history of the nation will see that there has never been a change of party without a revolution. There has often been a shifting of control from one group to another of a slightly different coloring, but the real party in opposition has never come to power without an overturn of the whole political system. Under the Restoration, for example, the ministers were sometimes Moderate and sometimes extremely Reactionary, but were never taken from the ranks of the liberal opposition. Again, during the Monarchy of July the different groups of Liberals disputed fiercely for the mastery, but neither the Radicals nor the Reactionaries had the slightest chance of coming to power. If space permitted, this truth might be illustrated by taking up in succession each of the governments that have flourished since the Revolution, but perhaps it is enough to refer to the only apparent exception that has occurred. While General MacMahon was President of the Third Republic, power was certainly transferred from the Reactionaries to the Republicans, but the circumstances of this case were very peculiar. The Republic had

hardly got into working order, and the struggle of the Reactionaries may be looked upon as a final effort to prevent it from becoming firmly established. The French themselves have always considered the occurrence, not as a normal change of party, but as the frustration of an attempt at a *coup d'état* or counter-revolution. This case, therefore, from the fact that it has been generally regarded as exceptional, may fairly be treated as the kind of exception that tends to prove the rule. A revolution in France has corresponded in many ways to a change of party in other countries, but with this grave disadvantage, that the new administration, instead of reforming the political institutions, destroyed them altogether. Of course such a method put gradual improvement out of the question, and before the nation could perfect her government she had to learn that the remedy for defects is to be sought through the reform, not the overthrow, of the existing system.

One would suppose that under the Republic no such difficulty could arise, because a republic means the rule of the majority, and the majority is sure to be sometimes on one side and sometimes on the other. But this is not the view of most French Republicans, and especially of the Radicals. These men, recognizing that, on account of a want of training in self-government, the people can be cajoled, or frightened, or charmed, or tricked into the expression of the most contradictory opinions, refuse to admit that any vote not in harmony with their own ideas can be a fair test of the popular will, and assume for themselves the exclusive privilege of declaring what the people really want. As M. Edmond Scherer has cleverly said: "Let us add that the God (universal suffrage) has his priests, whose authority has never been quite clear, but who know his wishes, speak in his name, and, if resistance occurs, confound it by an appeal to

the oracle whose secrets are confided to them alone." [1] The Radicals, therefore, cannot admit a possibility that the true majority can be against them, and nothing irritates them so much as to hear the other parties claim that the people are on their own side. It has been said that the Republic will not be safe until it has been governed by the Conservatives,[2] and the remark has a special significance in this connection. It meant that, until the Conservative elements come to power, it would not be clear whether the Republic has enough strength and elasticity to stand a change of party without breaking down. It meant also that the right of the majority to rule, which is the ultimate basis of the consensus on which the Republic must rest, would not be surely established until each party has submitted peaceably to a popular verdict in favor of another.

As the Republic grows older, the form of its institutions will no doubt be gradually modified, but, whatever changes take place, one thing is clear: the responsibility of the ministers to parliament must be retained. In a country like the United States, where power is split up by the federal system, where the authority in the hands of the executive is comparatively small, and, above all, where the belief in popular government and the attachment to individual liberty and the principles of the common law are ingrained in the race, there is no danger in entrusting the administration to a president who is independent of the legislature. But this would not be safe in France, because, owing to the centralization of the government and the immense power vested in the executive, such a president would be almost a dictator during his term of office; and the temptation to prolong his authority,

[1] *La Démocratie et la France*, p. 18.

[2] "La République et les Conservateurs," *Revue des Deux Mondes*, March 1, 1890, pp. 120–121. This means, of course, the conservative element among the people, and not merely the conservative Republicans.

from public no less than from selfish motives, would be tremendous. And, in view of the tendency of the mercantile classes, and even of the peasants, to crave a strong ruler, it might not be difficult for him to do so, as Louis Napoleon proved long ago. He was able to overthrow a popular assembly because the French had long been accustomed to personal government, and because an assembly was incapable of maintaining a stable majority; because, in short, the French knew how to work personal but not representative government: and the danger will continue until parliamentary institutions are perfected, and their traditions by long habit have become firmly rooted. The French president cannot, therefore, be independent, and the only feasible alternative is to surround him with ministers who are responsible to the Chamber of Deputies. But if the parliamentary system must be retained, it is important to remove the defects that it shows to-day, and especially is it necessary, on the one hand, to diminish the autocratic power of the administration, which offers a well-nigh irresistible temptation to both minister and deputy; and, on the other hand, to give the cabinet more stability, more dignity, and more authority; to free it from the yoke of the groups in the Chamber; to relieve it from the domination of irresponsible committees, and from the danger of defeat by haphazard majorities; to enable it to exert over its followers the discipline that is required for the formation of great, compact parties; to make it, in short, the real head of a majority in parliament and in the nation.

That the Republic will endure no one will now doubt. The conduct of the nation during its heroic struggle in this war seems to prove it beyond all question. But that the methods of operating the republican government are defective no one is more keenly aware than the French them-

selves. Their criticism of the evils of politics have been incisive; and in fact the very disenchantment which the Republic has brought, the loss of faith in regeneration by any form of government, has not been without its value. If political idealism has faded into the light of common day this has had a bracing effect upon the national character, a sobering, invigorating influence which could be perceived even before this war revealed it to the world. The French people are more serious, more earnest, of a finer and deeper nature than their parliamentary life suggests. The imperfections in the government have been largely due to the fact that the Republic was at the outset an experiment, surrounded, as they believed, by uncertainty and perils which with growing stability have vanished into the past. In course of time, the French genius can hardly fail to remove them, relying upon the confidence the people have acquired in their own national force, in one another, and in the capacity for common action which their achievements in this war have made clear.

CHAPTER VIII

ITALY

Although since the advent to power of Mussolini, at the head of the Fascisti, the political state of Italy has undergone a profound change, yet the new rule is still far from having taken a stable form. Whether it will prove durable or not, and if it does so what permanent shape it will assume, are still uncertain. Under these conditions, it seems wise to retain here the description of Italian institutions as they existed before the Fascist uprising, the more so as those institutions, or rather the methods of their operation, shed some light on the causes of recent events.

The perfection of its organization and the excellence of its laws preserved the life of Rome long after its vital force had become exhausted; and when the Teutonic tribes had once broken through the shell of the western empire, they overran it almost without resistance. Europe sank into a state of barbarism, from which she recovered to find her political condition completely changed. Slowly, during the Middle Ages, the nations were forming, until at last Europe became divided into separate and permanent states, each with an independent government of its own. In two countries, however, — Italy and Germany, — this process of development was delayed by the existence of the Holy Roman Empire, which claimed an authority far greater than it was able to wield, and, while too weak to consolidate its vast dominions into a single state, was strong enough to hinder them from acquiring distinct and national governments.

The condition of Italy was further complicated by the presence of the Pope; for although the papacy was an immense civilizing force in mediæval Europe, yet the constant quarrels of the Pope and the Emperor, and the existence of the States of the Church, tended greatly to prevent the development of Italy as a nation. The country was broken into a multitude of jarring elements, and even Dante saw no hope of union and order save under the sway of a German Emperor. The north of Italy was full of flourishing cities enriched by commerce and manufactures and resplendent with art, but constantly fighting with each other, and, except in the case of Venice, a prey to internal feuds that brought them at last under the control of autocratic rulers.[1] The south, on the other hand, fell under the dominion of a series of foreign monarchs, who were often despotic, and, by making the government seem an enemy of the governed, destroyed in great measure the legal and social organization of the people. For thirteen centuries — from the reign of Theodoric the Ostrogoth to the time of Napoleon — the greater part of Italy was never united under a single head; and in both of these cases the country was ruled by foreigners. Yet, short-lived and unnatural as the Napoleonic kingdom of Italy was, it had no small effect in kindling that longing for freedom and union which was destined to be fulfilled after many disappointments.

By the treaty of Vienna, in 1815, Italy was again carved into a number of principalities, most of them under the direct influence of Austria. Most of them, but not all, for in the northwestern corner of the peninsula, between the mountains and the sea, lay Piedmont, ruled by a prince of the house of Savoy, with the title of King of Sardinia. Dur-

[1] Genoa was torn with factions, and was at times, though not permanently, subject to Milan or to France.

ing the great popular upheaval of 1848, Charles Albert, a king of this line, granted to his people a charter called the Statuto, and in that year and the following he waged war with Austria for the liberation of Italy. He was badly beaten, but succeeded in attracting the attention of all Italians, who now began to look on the King of Sardinia as the possible savior of the country. After his second defeat, at Novara, on March 23, 1849, Charles Albert abdicated in favor of his son, Victor Emmanuel, who refused to repeal the Statuto in spite of the offers and the threats of Austria — an act that won for him the confidence of Italy and the epithet "Il Re Galantuomo," King Honest Man. The reliance, indeed, which Victor Emmanuel inspired was a great factor in the making of Italy; and to this is due in large part the readiness with which the Italian revolutionists accepted the monarchy, although contrary to their republican sentiments. In fact, the chivalrous nature of the principal actors makes the struggle for Italian unity more dramatic than any other event in modern times.[1] The chief characters are heroic, and stand out with a vividness that impresses the imagination, and gives to the whole history the charm of a romance. Victor Emmanuel is the model constitutional king; Cavour, the ideal of a cool, far-sighted statesman; Garibaldi, the perfect chieftain in irregular war, dashing, but rash and hot-headed; Mazzini, the typical conspirator, ardent and fanatical; — all of them full of ardor and devotion. The enthusiasm which they inspired went far to soften the difficulties in their path, and to help the people to bear the sacrifices entailed by the national regeneration. Over against these men stands Pius IX, who began his career as a reformer, but, terrified by the march

[1] Professor Dicey speaks of this, and draws a comparison between Italian and Swiss politics, in a letter to *The Nation*, of Nov. 18, 1886.

of the revolution, became at last the bigoted champion of reaction. The purity of his character and the subtle charm of his manner fitted him to play the part of the innocent victim in the great drama.

The Union of Italy

When Cavour first became prime minister of Victor Emmanuel in 1852, his plan was a confederation of the Italian States under the Pope as nominal head, but practically under the lead of the King of Sardinia. Now, in order to make this plan a success, it was necessary to exclude the powerful and reactionary House of Hapsburg from all influence in the peninsula, and with this object he induced Napoleon III to declare war against Austria in 1859; but when the Emperor brought the war to a sudden end by a peace that required the cession of Lombardy alone, and left Venice still in the hands of the enemy, Cavour saw that so long as Austria retained a foothold in Italy, many of the principalities would remain subject to her control. He therefore changed his plan, and aimed at a complete union of Italy under the House of Savoy.[1] The whole country was ready to follow the lead of Victor Emmanuel, and, except for Venice and Rome, which were guarded by foreign troops, the march of events was rapid. The people of the northern states had already risen and expelled their rulers, and early in 1860 they declared for a union with Sardinia. Later in the same year Garibaldi landed at Marsala with a thousand men, roused the country, and quickly overran Sicily and Naples, which decided by popular vote to join the new kingdom — a step that was soon followed by Umbria and the Marches. The rest of Italy

[1] Jacini, *I Conservatori e l' Evoluzione dei Partiti Politici in Italia*, p. 55 *et seq.*

was won more slowly. Venice was annexed in 1866, as a result of the war fought against Austria by Prussia and Italy; and Rome was not added until 1870, after the withdrawal of the French garrison and the fall of Napoleon III, who had sent it there to protect the Pope.

The Statuto

It is curious that Sardinia expanded into the kingdom of Italy without any alteration of its fundamental laws, for the Statuto, originally granted by Charles Albert in 1848, remains the constitution of the nation to-day. It has never been formally amended, and contains, indeed, no provision for amendment. At first it was thought that any changes ought to be made by a constituent assembly, and in 1848 a law was passed to call one, although on account of the disastrous results of the war it never met. By degrees, however, an opinion gained ground that the political institutions of Italy, like those of England, could be modified by the ordinary process of legislation. This has actually been done, to a greater or less extent, on several occasions; and now both jurists and statesmen are agreed that unlimited sovereign power resides in the king and Parliament.[1] The Statuto contains a bill of rights; but, except for the pro-

[1] Brusa, *Italien*, in Marquardsen's *Handbuch*, pp. 12–16, 181–182; Ruiz, "The Amendments to the Italian Constitution," *Ann. Amer. Acad. of Pol. Sci.*, Sept., 1895. It may be noted that the various contributions to Marquardsen's series are of very different value, and that Brusa's is one of the best. He remarks (p. 15) that, before changing any constitutional provision, it has been customary to consult the people by means of a general election, and that it is the universal opinion that Parliament has not power to undo the work of the popular votes by which the various provinces were annexed; in other words, that Parliament cannot break up the kingdom. It has been suggested that the courts can consider the constitutionality of a law which involves a forced construction of the Statuto, but this view has not prevailed. (Brusa, pp. 182, note 3, 229–230.)

vision forbidding censorship of the press, and perhaps that protecting the right of holding meetings,[1] it was not designed to guard against oppression by the legislature, but only by the executive. The Statuto is, in fact, mainly occupied with the organization of the powers of state, and has gradually become overlaid with customs, which are now so strong that many Italian jurists consider custom itself a source of public law. They claim, for example, that the habit of selecting ministers who can command a majority in Parliament has become binding as part of the law of the land.[2]

Let us consider the powers of state in turn, beginning with the king and his ministers, then passing to the Parliament, then to the local government and the judicial system, and finally to the position of the Catholic Church.

The King

At the head of the nation is the king, whose crown is declared hereditary, according to the principles of the Salic law; that is, it can be inherited only by and through males.[3] It sounds like a paradox to say that the king is a constitutional sovereign, but that the constitution does not give a correct idea of his real functions, and yet this is true. By the Statuto, for example, his sanction is necessary to the validity of laws passed by the Parliament,[4] but in point of fact he never refuses it.[5] Again, the constitution provides that treaties which impose a burden on the finances or change the territory shall require the assent of the chambers,[6] leaving the crown free to conclude others as it thinks best; but in practice all treaties, except military conven-

[1] Arts. 28, 32.
[2] See Brusa, p. 19.
[3] Statuto, Art. 2.
[4] Statuto, Art. 7.
[5] Brusa, pp. 105, 153; cf. Dupriez, i. 281, 292–297.
[6] Statuto, Art. 5.

tions and alliances, are submitted to Parliament for approval.[1] The king is further given power to declare war, to appoint all officers, to make decrees and ordinances, to create senators, to dissolve the Chamber of Deputies, and so forth;[2] but the Statuto also provides that no act of the government shall be valid unless countersigned by a minister; and in fact all the powers of the king are exercised in his name by the ministers, who are responsible to the popular chamber.[3] He is, indeed, seldom present at cabinet meetings, and has little or no direct influence over current domestic politics,[4] although it is said that his personal opinion has had a good deal of weight on the relations with foreign states.[5] When, however, a cabinet crisis occurs and the ministry resigns, the king has a great deal of latitude in the appointment of its successor; for the Chamber is not divided into two parties, one of which naturally comes into power when the other goes out, but, as in France, it is split up into a number of small groups, so that every ministry is based upon a coalition. The king can, therefore, send for almost any one he pleases and allow him to attempt to form a cabinet. It often happens, moreover, that the man selected feels that he cannot get the support of a majority in the existing Chamber, but, hoping for a favorable result from a new election, is willing to undertake to form a cabinet if allowed to dissolve Parliament. In such cases the king exercises his own discretion, and grants permission or not as he thinks best; for, contrary to the habit in France, dissolutions in Italy are by no means rare. Thus the Italian king, although strictly a constitutional monarch tied up in

[1] Brusa, p. 106. [2] Statuto, Arts. 5–9.

[3] Statuto, Art. 67; and see Brusa, p. 105.

[4] Brusa, p. 108. Dupriez, i. 289, says that he presides only when peculiarly important matters are under discussion.

[5] Dupriez, i. 296. This is a common opinion.

a parliamentary system, is not quite so powerless as the French president or the English king.

The Ministers

In the selection of his ministers the king is not limited by law to members of Parliament, but, if a man is appointed who is not a member of either house, he is obliged by custom to become a candidate for the next vacant seat in the Chamber of Deputies, unless he is created a senator.[1] As in other parliamentary governments on the Continent, however, the ministers and their undersecretaries have a right to be present and speak in either Chamber, although they can vote only in the one of which they happen to be members.[2] The work of the Parliament is, indeed, chiefly directed by them; for, while individual members have a right to introduce bills, the power is used only for matters of small importance.[3] As a rule, each minister has charge of a department of the administration; but it is allowable, and was at one time not uncommon, to appoint additional ministers without portfolios, whose duties consisted solely in helping to shape the policy of the government, and defending it in the chambers.[4]

[1] Brusa, p. 108; and the same thing is true of the parliamentary undersecretaries. *Id.*, p. 196.

[2] Statuto, Art. 66; Law of Feb. 12, 1888, Art. 2.

[3] Brusa, p. 172. Dupriez (i. 308) says that the ministers in Italy have not so complete a monopoly of initiative as in other countries, and that private members often propose measures with success. But in saying this he must not be understood to deny that the laws enacted as a result of private initiative are unimportant compared with the government measures, both as regards number and character.

[4] Brusa, p. 197. See, also, the lists of the different ministries published in the Manual of the Deputies. This manual, by the way, is a most valuable production, for it contains the text of many important laws and a large amount of interesting information. For the organization and functions of the various departments, see Brusa, pp. 200 *et seq.*

The Senate

The Italian Parliament has two branches — the Senate and the Chamber of Deputies. The Senate is composed of the princes of the royal family,[1] and of members appointed by the king for life from certain categories of persons defined by the Statuto.[2] These are: bishops;[3] sundry high officials, civil, military, and judicial;[4] deputies who have served three terms, or six years;[5] men who have been for seven years members of the Royal Academy of Science; men who pay over three thousand lire (about six hundred dollars) in taxes;[6] and men deserving exceptional honor for service to the state. Owing to the extreme severity of the Senate in recognizing such desert, there have been very few members from this last class; for the Senate itself has the strange privilege of deciding whether a person selected by the king belongs properly to one of these classes, and is qualified to be a senator.[7] Except for money bills, which must be presented first to the Chamber of Deputies, the legislative powers of the two houses are the same, but the Senate has also judicial functions. It can sit as a court to try ministers impeached by the Chamber of Deputies; to try cases of high treason and attempts on the safety of

[1] Statuto, Art. 34.

[2] Statuto, Art. 33. All the appointed members must be forty years old.

[3] Since the quarrel with the Pope in 1870 this class has not been available. Brusa, p. 119.

[4] Except in the case of the highest officials, persons of this class can be appointed only after a period of service which varies from three to seven years, according to the office they hold. In 1910 there were ninety-nine senators from this class.

[5] Out of a total of about three hundred and eighty-three, there were in 1910 about one hundred and forty-seven senators from this class.

[6] There were seventy-one senators from this class.

[7] Brusa, p. 119; and see the Statuto, Art. 60.

the state;[1] and to try its own members — the Italians, curiously enough, having copied in their Senate the antiquated privilege which entitles the English peers to be tried for crime only by members of their own body.[2] As a matter of fact, the Senate has very little real power, and is obliged to yield to the will of the lower house.[3] In 1878–1880 it did, indeed, refuse to abolish the unpopular grist-tax for more than a year, but gave way before a newly elected Chamber of Deputies.[4] It would probably not venture even so far to-day, for the number of senators is unlimited, and on several occasions a large batch of members has been created in order to change the party coloring of the body — in 1890 as many as seventy-five having been appointed for this purpose at one time.[5] As in other countries where the parliamentary system exists, the cabinet is not responsible to the upper house; and it is only occasionally, and as it were by accident, that a minister has resigned on account of an adverse vote in the Senate.[6]

The Chamber of Deputies

The Chamber of Deputies consists of five hundred and eight members, elected until 1912 on a limited franchise. By the earlier law, the suffrage was so restricted that less than two and a half per cent of the population were entitled to vote; but this was felt to be too small a proportion, and in 1882 it was increased by an act whose provisions were

[1] Statuto, Art. 36. [2] Statuto, Art. 37.

[3] The changes made by the Senate in bills have usually a legal rather than a political importance. Dupriez, p. 313.

[4] Brusa, pp. 155–156. See Petruccelli della Gattina, *Storia d' Italia, 1860–1880*, pp. 420–421, 558–559.

[5] In 1886 forty-one were appointed together, and in 1892 forty-two. See the list of senators with their dates, in the Manual of the Deputies for 1892, p. 806 *et seq.*, and p. 876.

[6] Brusa, p. 158, note 3.

in force for thirty years.[1] By this statute a voter must be able to read and write, and must have passed an examination on the subjects comprised in the course of compulsory education,[2] except that the examination was not required in the case of officials, professional men, graduates of colleges, and others who could, of course, pass it; nor in the case of men who had received a medal for military or civil service, or who paid a direct tax of nineteen and four-fifths lire (about four dollars), or who paid rents of certain amounts. The change more than tripled the number of voters at once;[3] and, although these still included only a small part of the citizens, it is to be observed that with the spread of elementary education their number was expected to increase until the suffrage became substantially universal.[4]

At first the members were chosen each in a separate district, but after the times of enthusiasm for Italian unity were over, and the generous impulse that had stirred the country began to give way before the selfish motives of everyday life, it was found that the deputies failed to take broad views of national questions, and were largely absorbed by

[1] Brusa, pp. 122–127. This law, with its amendments, recodified in 1895, may be found in full in the Manual of the Deputies for that year.

[2] Education was compulsory in Italy only between the ages of six and nine. Act of July 15, 1877, Art. 2.

[3] It raised the number from 627,838 to 2,049,461. Brusa, p. 127. When the law went into effect, the voters were not very unequally divided into those who passed the examination, those who paid the taxes, and the other excepted classes. *Id.*, p. 126, notes 1–2.

[4] In order to restrict the arbitrary influence of the government over elections, and to prevent the abuses which had been common before, a procedure for preparing the lists of voters and insuring the secrecy of the ballot was established by the same law (see Brusa, pp. 127–128, 130–132); and in this connection it may be noticed that soldiers and sailors in active service (including subalterns and police officials) were not allowed to vote. Law of March 28, 1895, Art. 14.

personal and local interests. It was found, in short, that they represented the nation too little and their particular districts too much;[1] and it was hoped that by increasing the size of the districts they would be freed from the tyranny of local influence, and enabled to form compact parties on national issues.[2] With this object the Act of 1882 distributed the five hundred and eight seats among one hundred and thirty-five districts, which elected from two to five deputies apiece;[3] and, in order to give some representation to minorities, it was provided that in those districts which elected five deputies no one should vote for more than four candidates.[4] The new system, called the *scrutinio di lista*, did not produce the results that were expected from it. On the contrary, in Italy as in France, where the same remedy was applied to the same evil, the organization and power of the local wirepullers grew with the increase in the number of deputies elected in a district, while the influence of the latter over the ministers and the provincial officers was greater than ever before.[5] An Act of May 5, 1891, abolished, therefore, the *scrutinio di lista* and reëstablished single electoral districts.

Finally, in spite of the large number of illiterates, an act was passed on June 30, 1912, which established very nearly universal manhood suffrage. It extended the right to vote to all men who can read and write, and to those who cannot but who have reached the age of thirty years and have performed their military service. The system of single

[1] Brusa, p. 16.

[2] Minghetti, *I Partiti Politici*, p. 18; Petruccelli della Gattina, p. 504.

[3] Three districts elected two deputies, sixty-one elected three, thirty-six elected four, and thirty-five elected five. Brusa, p. 129. See Arts. 44 and 45 of the Act of 1882, and the table of districts annexed thereto.

[4] Act of 1882, Art. 65.

[5] Brusa, *Ibid.;* and see Turiello, *Governo e Governati in Italia*, 2d ed.; *Fatti*, p. 326; *Proposte*, p. 171.

electoral districts was retained. The act increased the electorate from three millions to about eight millions; and the first elections held under it in the course of the following year showed a distinct tendency toward the more radical groups.

In accordance with the general practice in Europe, the deputies are not required to be residents of their districts, the only important limitations on the choice of candidates being the requirement of the age of thirty years, and the provision excluding priests who have active duties, mayors, and provincial counsellors in their own districts, and all officials paid from the treasury of the state with the exception of ministers, undersecretaries, and a few others.[1] Under the earlier laws the deputies received no pay for attendance, but were given free passes over the railroads,[2] and it was no doubt partly for this reason that the small attendance in the Chamber was long a crying evil. To remedy this the Act of 1912 provided for the payment of the members.

The Chamber is elected for five years, but so far its life has always been cut short by a dissolution, and in fact the average length of term has been less than three years.[3] The budget and the contingent of recruits are adjusted by annual laws, and there would naturally be a new session every year; but in order not to interrupt the work of Parliament,

[1] Brusa, pp. 132–134; and see Acts of Dec., 1860 (Arts. 97, 98), July 3, 1875, May 13, 1877, July 5, 1882, March 28, 1895 (Arts. 81–89). There is a curious provision that only forty officials of all kinds (except ministers and undersecretaries), and among them not more than ten judges and ten professors, can be deputies at the same time, and if more are elected they are reduced to that number by lot. Law of March 28, 1895, Art. 88. On account of some scandals that occurred at one time it is further provided that no officers of companies subventioned by the state, and no government contractors, can sit in the Chamber. Brusa, p. 134; law of March 28, 1895, Arts. 84–85.

[2] Brusa, pp. 159–160. [3] *Id.*, p. 139.

and especially the consideration of the budget, which is apt to be behindhand, a curious habit grew up of prolonging the sessions, so that three parliaments have had only a single session apiece, one lasting two and a half and another three and a half years, all of them unbroken save by occasional recesses.[1]

The Chamber of Deputies elects its own President and other officers, and the vote for President used to be an occasion for a trial of party strength, as in most other legislative bodies. For some years, however, the English habit prevailed of reëlecting the same man without regard to party affiliations; [2] and this is the more striking because the President appoints the committees on rules and contested elections,[3] which have, of course, no little importance. The idea that the presiding officer ought to be strictly impartial is not the only valuable suggestion that the Italians derived from England, for they have inherited Cavour's admiration for British parliamentary procedure, and in general they attempt to follow it. Unfortunately they have not done so in all cases, for the system of committees and of interpellations or questions has been copied mainly from the French and not the English practice.

The Administrative System

Such, briefly stated, are the position of the king and the composition of the Parliament; but although the king and

[1] Brusa, p. 139; and see the list of the sessions of the various Parliaments in the Manual of the Deputies.

[2] Brusa, pp. 140 and 156, note 2. Biancheri was President of the Chamber continuously from 1884 to 1892. Manual of the Deputies for 1892 (pp. 800–802.) In that year he was dropped for party reasons, and in fact the practice of looking on the President as the representative of a party has unfortunately revived.

[3] Rules of the Chamber of Deputies, Art. 12.

his ministers on the one hand, and the Parliament on the other, are the great political forces whose interaction determines the character of the government, still it is impossible to appreciate the relations between the two without some knowledge of the method of administration, the principles of local government, and the control exercised by the courts of law, because these matters have a direct bearing on the functions of the cabinet and hence on the nature of the influence exerted upon it by the Parliament.

The administration both of national and local affairs, and to some extent the judicial system of Italy, are modeled on those of France, and they present the defects without all the advantages of the original. This is particularly true of the administrative system, where Italy has copied the centralization, but has been unable to acquire the traditions which give real solidity to the body of officials. At first sight it seems strange that Cavour and his successors, with their admiration for English institutions, should have turned to the French bureaucracy as a pattern; but there were several reasons for their course. In the first place the Napoleonic rule had already made the Italians familiar with the French form of administration. A far stronger motive came from the fact that after Cavour gave up the idea of a confederation, and strove to create a united kingdom of Italy, it became important, in view of the possible interference of foreign powers, to consolidate the different provinces as completely and rapidly as possible. The Italian statesmen tried, therefore, to make the people homogeneous; to remove as far as possible all local differences; and to destroy all possibility of local opposition.[1] The country, moreover, was very backward, and a great

[1] See Brusa, pp. 23, 337; Jacini, *I Conservatori*, p. 55 *et seq.*; *Due Anni di Politica Italiana*, pp. 93–94.

work of regeneration had to be undertaken, especially in the south, where society was badly disintegrated and brigandage was rife. To accomplish this a highly centralized and autocratic system, in which the government could make itself quickly and decisively felt, was thought essential;[1] and it was believed, not without reason, that until the union was accomplished, and order had been established in Naples and Sicily, it was impossible to introduce general local self-government or universal liberty. The old territorial divisions were therefore swept away, and replaced by artificial districts devoid, of course, of real local life. A centralized form of administration was set up, and the government was given a highly arbitrary power to interfere with the freedom of the individual. Such a system might have worked very well in the hands of a wise dictator, but, as some of the Italian writers have themselves remarked, it was so entirely inconsistent with the parliamentary form of government that one of them was sure to spoil the other, and experience has shown that both of them have suffered from the combination.[2]

Contrast between Theory and Practice

There is a marked contradiction in Italy between the theory and practice of government; for there is a strong ambition to be abreast of the times and a general belief in the principle of personal liberty, but the actual condition of the nation has made it impossible to live up to these standards. A striking example of the contrast between aspirations and results is furnished by the state of the

[1] See Brusa, pp. 253–254.

[2] Cf. Jacini, *I Conservatori*, pp. 67–68; Minghetti, *I Parti Politici*, p. 100; Pareto, "L'Italie Economique," *Revue des Deux Mondes*, Oct. 15, 1891; and see Bertolini, "I Pieni Poteri per le Riforme Organiche," *Nuova Antologia*, June 1, 1894.

criminal law, for capital punishment has been abolished, in spite of the fact that homicide is more common than in any other civilized country in Europe,[1] and yet criminal procedure is in such a condition that thousands of people have been arrested on suspicion, kept in prison sometimes for years, and finally released because there was not sufficient ground for trial.[2] Thus by her code Italy appears to be in advance of most other nations, but in her criminal practice she is really far behind them. The truth is that the successive governments, in view of the unsettled state of the country, have been afraid to place restraints on their own power, and weaken an authority thought necessary for the preservation of order. Of course the result has been a good deal of arbitrary officialism and disregard of the rights of the citizen,[3] but while this is a misfortune for the north of Italy, extraordinary and autocratic power has at times been indispensable in Sicily and the south.[4] The impossibility, indeed, of giving effect to the theories of liberty that are constantly proclaimed from every quarter was forcibly illustrated by the only serious attempt that has been made to do so. When Cairoli and Zanardelli became ministers in 1878 they tried to carry out their principles thoroughly. They permitted the constitutional right of public meeting to be freely exercised, and gave up the despotic practice of preventive arrest, trusting to the courts to punish offenders against the law; but brigandage increased so fast, and other

[1] Turiello, *Fatti*, pp. 330–332.

[2] See Speyer, in *Unsere Zeit*, 1879, i. 576. Petruccelli della Gattina says (*Storia d'Italia*, p. 258) that in 1876, 93,444 persons were arrested on suspicion and let off because there was no ground for trial. This, it is true was eleven years before the code was finally enacted; nevertheless it illustrates the contrast between ideals and practice in criminal matters, and in fact in that very year the abolition of the death penalty was voted by the Chamber of Deputies, but rejected by the Senate.

[3] Cf. Brusa, p. 183. [4] Cf. Speyer, in *Unsere Zeit*, 1879, i. 581.

disturbances became so alarming, that the cabinet was driven from office, and its policy was abandoned. In later years Zanardelli has again held office, and succeeded in improving the administrative and judicial system to some extent, but the progress of the reform has been extremely slow, and the arbitrary power of the government, although reduced, still conforms even in quiet times far more nearly to French than to Anglo-Saxon notions.

The Ordinance Power

There are two matters in connection with the administration that require special notice. One of them is the power of the executive officials to make ordinances. This is even more extensively used than in France, and there are complaints that it is sometimes carried so far as to render the provisions of a statute nugatory,[1] although the constitution expressly declares that "the king makes the decrees and regulations necessary for the execution of the laws, without suspending their observance or dispensing with them."[2] The interpretation put upon this provision is in fact so broad that the government is practically allowed to suspend the law subject to responsibility to Parliament, and even to make temporary laws which are to be submitted to Parliament later — a power that is used when a tariff bill is introduced, to prevent large importations before the tariff goes into effect.[3] The Parliament has, moreover, a habit of delegating legislative power to the ministers in the most

[1] Brusa, pp. 170–172.

[2] Statuto, Art. 6. The courts have power to refuse to apply an ordinance which exceeds the authority of the government, but, in practice, this is not an effective restraint. Brusa, pp. 171–172, 175, 187.

[3] Brusa, pp. 186–187. In 1891 the customs duties on several articles were increased by royal decree, which was subsequently ratified by Parliament.

astonishing way. In the case of the Italian criminal code, for example, the final text was never submitted to the chambers at all, but after the subject had been sufficiently debated, the government was authorized to make a complete draft of the code, and then to enact it by royal decree, harmonizing it with itself and with other statutes, and taking into account the views expressed by the chambers. The same was true of the electoral law of 1882, of the general laws on local government and on the Council of State, and of many other enactments.[1] It may be added that although the Statuto does not expressly provide for it, the ministers, prefects, syndics, and other officials are in the habit of making decrees on subjects of minor importance.[2] The preference indeed for administrative regulations, which the government can change at any time, over rigid statutes is deeply implanted in the Latin races, and seems to be especially marked in Italy.[3]

The Civil Service

The other matter referred to as requiring special notice is the civil service. The host of officials, who are, unfortunately, too numerous and too poorly paid,[4] can be appointed

[1] Brusa, pp. 175–176; Bertolini, "I Pieni Poteri," *Nuova Antologia*, June 1, 1894. Several laws of this kind may be found in the Manuals of the Deputies. They are issued in the form not of statutes, but of ordinances, and begin by reciting the legislative authority under which they are made. It is a curious fact that Italian statutes vary a great deal, sometimes containing only general principles, and leaving to the government the task of completing them by supplementary regulations, and sometimes going into minute details (Brusa, p. 171). Dupriez, who looks at the matter from a French standpoint, says (i. 336) that in the struggle between the government and the Parliament over the limits of the ordinance power, the government has tried to extend its authority beyond measure, and the Parliament to dispute it even in the matter of organizing the administrative service.

[2] Brusa, pp. 188–190.

[3] Minghetti, pp. 293–294.

[4] Brusa, p. 260.

or dismissed very much at the pleasure of the government, for although there are royal decrees regulating appointments and removals in many cases, they do not appear to furnish a satisfactory guarantee.[1] Here, then, is a great mass of spoils, in the distribution of which the politicians take an active part.[2] Decrees, providing for competitive examinations for admission to the service, are indeed common; and in 1890 a statute,[3] affecting the officers in the department of public safety, was passed with provisions for such examinations, and for preventing removal without the consent of a standing commission. But civil service laws, like all others, depend for much of their effectiveness on the persons who execute them.[4]

[1] Dupriez, i. 337–340; Brusa, pp. 252–255. For the scope of these decrees, see p. 261 *et seq.*

[2] Brusa, pp. 152–153; and see Dupriez, i. 340–342.

[3] Law of Dec. 21, 1890.

[4] There are two bodies that exercise a considerable control over the government. One of these is the Council of State, which has, however, only an advisory power, except in matters of administrative justice, and in the case of provincial and communal officials whom it protects from arbitrary removal. On this subject see Brusa, p. 212 *et seq.* The laws of June 2, 1889, which regulate this body, may be found in the Manual of the Deputies for 1892, p. 357. The other is the Court of Accounts (*Corte dei Conti*), whose members can be removed only with the consent of a commission composed of the Presidents and Vice-Presidents of both Chambers. It has a limited supervision over the collection of the revenue, and passes finally on pensions and on the accounts of officials, provinces, and communes. It also makes a yearly report to Parliament on the accounts of each ministry; but its most extraordinary function consists in the fact that all decrees and orders which involve the payment of more than 2,000 lire must be submitted to it for registration, and if it thinks them contrary to the laws or regulations it can refuse to register them. It is, indeed, obliged to register them if the Council of Ministers insists upon it, but in that case they must be transmitted to the President of the Chambers together with the opinion of the *Corte dei Conti*. Law of Aug. 14, 1862, Arts. 14, 18, 19; and see Brusa, pp. 219–224.

Local Government

Let us look for a moment at the local government. The Italian statesmen had at first a general belief in decentralization,[1] but the force of circumstances and a repugnance to the idea of federation were so strong that the old territorial divisions, which alone could have furnished a solid basis for a decentralized system, were abandoned, and the whole country was cut up into a series of brand-new districts. These are the provinces, the circondari, the mandamenti, and the communes,[2] of which the first and the last are the only ones of great importance. Until the Act of 1888, the powers conferred on the local bodies were extremely small, and even now they are far from extensive, for the whole system is copied from that of France, and, with some variations in detail, the organization and powers of the French local officers and councils have been followed very closely.[3] A general description of the local government would therefore consist very largely in a repetition of what has been already said in the first chapter on France; and hence it is only necessary to touch on a few salient points, begging the reader to remember how great a power and how large a share of political patronage this system places in the hands of the central authorities.[4] At the head of each province,

[1] In 1868, the Chamber actually voted an order of the day in favor of decentralization. Petruccelli della Gattina, pp. 192–195.

[2] In the provinces of Mantua and Venice the division is somewhat different, but is being brought into accord with the general plan. Brusa, p. 339.

[3] For a description of the local government, see Brusa, p. 337 *et seq.* The full text of the law on the subject was fixed by royal ordinance on Feb. 10, 1889, in accordance with the Act of Dec. 30, 1888. It was followed by an elaborate ordinance regulating its execution, and on July 7, 1889, and July 11, 1894, by acts amending the law. Manual of Deps., 1895, pp. 301–394.

[4] In practice the administration appears to be, if anything, even more centralized than in France, owing to the habit on the part of the officials of

which corresponds to the French department, is a prefect appointed by the king, and directly subject to the Minister of the Interior. Like his French prototype, he is regarded as a political officer, and uses his influence more or less openly at elections.[1] The chief executive magistrate of the commune is the syndic, who is chosen, like the mayor in France, by the communal council from its own members. In the smaller communes, he was, until 1896, selected by the king from among the members of the council. As in France, both the provinces and the communes possess elected councils. In Italy they are chosen for six years, one half being renewed every three years; but the suffrage for these bodies was exceedingly restricted, until by the Act of 1888 it was extended so as to be somewhat wider, especially as applied to the peasants, than the suffrage for the election of deputies.[2] The resources of the local bodies are not adequate for the fulfillment of their duties, and this, combined with a love of municipal display, has been the cause of heavy debts, especially in the case of the larger cities, many of which have long been on the verge of bankruptcy.[3]

referring everything to the central government. Jacini, *I Conservatori*, p. 130; Minghetti, *I Partiti Politici*, pp. 240–241.

[1] Brusa, pp. 225, 277. On the eve of the elections in 1892, forty-six out of the sixty-nine prefects were dismissed or transferred to other provinces, in order to help the government to carry the country.

[2] The other communal and provincial bodies are the municipal *giunta*, which is elected by the communal council, and has executive powers; the provincial deputation, which occupies a similar position in the province, and is elected by the provincial council; the prefectorial council, appointed by the central government to assist the prefect; and the provincial administrative *giunta*, partly appointed and partly elected, which has a certain share in administrative justice, and whose approval is necessary for the validity of some of the most important acts of the local councils. For a list of these acts see the Local Government Law of Feb. 10, 1889, Arts. 142, 166–171, 173, and 223.

[3] See Brusa, pp. 365–367; Turiello, *Proposte*, pp. 56, 63–65.

The Judicial System

There is one branch of the Italian government which has not been centralized, and that is the judicial system. The lower courts are, indeed, new creations, organized on a symmetrical plan very much resembling the French; but, in order apparently not to offend the bench and bar of the old principalities, the highest courts have been suffered to remain in the more important capitals, so that there are now five independent Courts of Cassation, those of Turin, Florence, Naples, Palermo, and Rome, each of which has final and supreme authority, within its own district, on all questions of ordinary civil law.[1] The Court of Cassation at Rome has, it is true, been given little by little exclusive jurisdiction over certain special matters;[2] but the ordinary civil jurisdiction is still divided among the five Courts of Cassation, which bear the same relation to each other as the highest state courts in America.[3] There is no appeal from one to another, and no one of them feels bound to accept the decisions of the others, or to follow them as precedents. One cannot help thinking that this is an unfortunate condition, because there is nothing that tends more completely to consolidate a people, without crushing out local life, than a uniform administration of justice. Italy has, indeed, a series of codes enacted at various times from 1865 to 1889, and covering civil law, civil procedure, com-

[1] A Court of Cassation is a court of last resort, which considers only errors in law in the decisions of inferior tribunals.

[2] These are, conflicts of competence between different courts, or between the courts and the administration; the transfer of suits from one court to another; disciplinary matters; and writs of error in criminal cases, in complaints for violation of election laws, in civil suits against judges, and in questions of taxes and of church property.

[3] For the organization and jurisdiction of the courts, see Brusa, pp. 231–238.

mercial law, criminal law, and criminal procedure; but a code alone will not produce uniformity, because there is still room for differences of interpretation, and in fact the Italian Courts of Cassation often disagree, and there is no tribunal empowered to harmonize their decisions.[1]

The Courts and the Officials

As we have already seen in the case of France, the decision of civil and criminal questions forms only a part of the administration of justice in continental Europe, on account of the distinction drawn between public and private law.[2] In order, therefore, to form a correct estimate of the position of the courts, we must consider their relation to the government, and their power to determine the legality of the acts of public officers. In Italy the prefects, subprefects, syndics, and their subordinates still enjoy the so-called administrative protection, that is, they cannot be sued or prosecuted for their official conduct without the royal consent.[3] This privilege is generally unpopular, and will no doubt be abolished when an adequate bill on the tenure of office is passed. Meanwhile the benefit of it is claimed more and more frequently, although the permission to proceed appears to be usually granted.[4] But even when this protection has been taken away, the courts will not have as much authority as in England or America. The reader will remember that the officers of the French government formerly

[1] Cf. Speyer, in *Unsere Zeit*, 1879, i. 576.

[2] Belgium presents an exception, for there the officials can be sued, and the acts of the government can be reviewed by the ordinary courts, as in an Anglo-Saxon country. Cf. Kerchove de Denterghem, *De la Responsabilité des Ministres dans le Droit Public Belge.*

[3] Law of Feb. 10, 1889, Arts. 8, 139.

[4] Brusa, p. 282; Turiello, *Fatti*, pp. 210–211. The permission to prosecute is not necessary in the case of offenses against the election laws. Law of Feb. 10, 1889, Art. 100 *et seq.*; Brusa, pp. 73, 130, note 1.

possessed a similar privilege, and were deprived of it after the fall of the Second Empire. He will remember also that the change made very little practical difference, because it was held that the ordinary courts had no power to pass on the legality of official acts, such questions being reserved exclusively for the administrative courts. The result of abolishing the privilege will not be precisely the same on the other side of the Alps, because the problem has been worked out on somewhat different lines, a curious attempt having been made to establish a compromise between the English and the French systems.

Administrative Law

The subject of administrative law is, indeed, very confused in Italy, and some years ago it was in a thoroughly unsatisfactory condition. When the union was formed, several of the component states possessed administrative courts of their own; but in order to produce uniformity, and also with a view of furnishing the rights of the citizen with a better guarantee, an act of March 20, 1865, abolished all these tribunals, and provided that the ordinary courts should have exclusive jurisdiction of all criminal prosecutions and of all civil cases in which a civil or political right was involved, the Council of State being empowered to decide whether such a right was involved or not.[1] It was not clearly foreseen that this last provision would place in the hands of the government an arbitrary power;[2] but such proved to be the case, for the Council of State, composed as it was at that time of members who could be removed

[1] *Legge sul Contenzioso Administrativo* (March 20, 1865). See, especially, Arts. 1, 2, 3, 13.

[2] Perhaps it would be more correct to say that it was not foreseen how this power would be used for party purposes. Minghetti, *I Partiti Politici*, pp. 270 *et seq.*

at pleasure,[1] showed little inclination in disputed cases to recognize that any private rights were involved; and, there being no administrative courts at all, the government had an absolutely free hand as soon as the jurisdiction of the ordinary courts was ousted.[2] The attempt to place the rights of the citizen more fully under the protection of the ordinary courts than in France had resulted in freeing the officials more completely from all control; for, except when strong political motives come into play, arbitrary conduct on the part of the French officials is restrained by the administrative courts. This state of the law in Italy gave rise to bitter complaints, but it lasted until 1877, when the decision of conflicts, as they are called, or disputes about jurisdiction between the administration and the courts, was transferred to the Court of Cassation at Rome.[3] Still there was no system of administrative justice; and hence, however illegal, and however much in excess of the authority of the official who made it, a decree, ordinance, or other act might be, no redress could be obtained from any tribunal unless it could be shown that an actual legal right was violated.[4]

Administrative Courts

This omission in the judicial system was finally supplied by the statutes of 1889 and 1890, which reorganized the Council of State, created a special section of it to act as an administrative court, and conferred an inferior administrative jurisdiction on the provincial giunta.[5] In order to give the council a considerable degree of independence, it was

[1] See *Legge sul Consiglio di Stato* of March 20, 1865, Art. 4.

[2] See Brusa, pp. 212–213, 247; Minghetti, *I Partiti Politici*, p. 147 *et seq.*

[3] Law of March 31, 1877 (Manual of Deps., 1892, p. 374).

[4] Cf. Brusa, pp. 247–250.

[5] These acts, June 2, 1889, and May 1, 1890, are printed in the Manual for 1892, at pp. 357 and 377.

provided at the same time that the members, whose number is limited, should be retired only on account of illness and removed only for breach of duty, and in each case only after hearing the opinion of the Council of State itself.[1] The section which acts as an administrative court enjoys a still greater degree of protection; for it is composed of a president and eight other members selected from among the councillors of state by the king, and of these eight not less than two nor more than four can be changed in any one year,[2] so that, although the body has not the permanence of a court of law, it is by no means a tool of the government. Except in purely political matters, and in certain questions relating to customs duties and conscription, it has power to decide whether the acts of the central or local officers are authorized by law, unless some special tribunal or the ordinary courts have jurisdiction.[3] In brief, therefore, the legality of official acts is determined in civil cases by the ordinary courts when a question of private right, and by the administrative courts when a question only of interest, is involved. The function of the ordinary courts in these cases is, however, strictly limited to the protection of the individual, and does not involve an authoritative declaration of the law, for it is expressly provided that the judgment must be confined to the case at bar, and in that alone is the administration bound by the decision.[4] This principle is deeply rooted in the jurisprudence of the nation, for the Statuto itself declares that the interpretation of the law in such a way as to be universally binding belongs exclusively to the legislative power.[5] The Italian, indeed, has a dread of that wholesome form of legislation, judge-made law —

[1] Act of June 2, 1889, Art. 4.
[2] *Ibid.*, Art. 24.
[3] Statuto, Art. 73.
[4] *Ibid.*, Art. 8.
[5] Act of March 20, 1865, Art. 4.

a prejudice which certainly seems very strange when we consider what a large part of the law of the civilized world, and especially of the law of the Latin races, was developed by means of the edicts of the Roman prætors.

It will be observed that the Italian system of administrative law differs from that of every other nation. According to the English principle, the ordinary courts have jurisdiction in all cases, and the idea of administrative law as an independent branch of jurisprudence is little known. In most of the continental countries, on the other hand, all matters involving the legality of official acts are reserved for a special class of courts, which have exclusive cognizance of those questions which constitute the domain of administrative law; but in Italy both classes of tribunals are called upon to decide the same questions, the ordinary courts being specially empowered to protect legal rights.

Weakness of the Judicial System

As seen on the statute book, the Italian judicial system appears to be very good. It seems to provide the individual with more ample remedies, and a better guarantee against arbitrary conduct on the part of the officials, than can be found in most of the countries of continental Europe. But in fact the judiciary is not strong enough to protect the citizen effectually. This is chiefly due, no doubt, to the absence of those deep-seated traditions that are necessary to give the magistrates a controlling authority over public opinion. It is due also to the existence of the five independent Courts of Cassation, which prevents any one court from having the power that might be acquired by a supreme national tribunal; and indeed it is self-evident that a decentralized judiciary can hardly be expected to restrain a centralized administration. Nor is the protection afforded to the bench

satisfactory. The constitution provides that judges, except in the lowest courts, shall be irremovable after three years of service,[1] and by statute they can be retired only on account of illness, and removed only for crime or neglect of duty, and in these cases only with the approval of the Court of Cassation at Rome. But a judge is not protected against a transfer from one judicial post to another of the same rank, and although by royal decree a commission annually appointed by the court at Rome must be consulted before such a transfer can be made, its advice is not binding on the government.[2] The judges are, therefore, by no means entirely independent of the executive, and complaints are often made that they are altogether too much under its control. It is impossible to say how far these complaints are justified,[3] but it is certain that the judiciary either has not enough power, or does not feel sufficiently free, to protect individuals against an oppressive abuse of political power, especially in local matters. This is true even in tranquil times, while the wholesale resort to martial law by the proclamation of the state of siege during the troubles in Sicily and at Carrara some years ago shows that the

[1] Statuto, Art. 69.

[2] Brusa, pp. 277–278. In 1878 this decree was repealed for a time, and one hundred and twenty-two transfers were made in six months. Minghetti, pp. 134–135.

[3] Writing in 1878, Jacini (*I Conservatori*, p. 29) said that, so far, the judiciary had resisted all party pressure, but since that time this does not seem to have been true. See Minghetti, *ubi supra;* Turiello, *Fatti*, p. 316; *Proposte*, pp. 234–235; De Viti di Marco, "The Political Situation in Italy," *Nineteenth Cent.*, Oct., 1895; Pareto, "L'Italie Economique," *Revue des Deux Mondes*, Oct. 15, 1891, *Giornale dei Economisti*, March, 1895, p. 353; Ruiz, *Ann. Amer. Acad. of Pol. Sci.*, Sept., 1895, p. 54; Wolffson, "Italian Secret Societies," *Contemp. Rev.*, May, 1891; Lord, "Italia non Fara da Se," *Nineteenth Cent.*, March, 1892. The charge that the courts were subject to political influence was made by the Parliamentary committee on the bank scandals in December, 1894.

courts find it hard to cope with disorder on any large scale.[1]

The judicial system has been dwelt upon here at what may seem an inordinate length because its condition is one of the most important factors in the present political condition of the kingdom.

The Church

There is one institution in Italy which is not strictly a part of the government, but is so closely connected with it, and has so direct an influence on politics, that it cannot be passed over. This is the Catholic Church. Within the last half-century nearly every country in Western Europe has found itself confronted with the Catholic question, and has been obliged to grapple with it; but the matter has a peculiar importance in Italy. Not because the Italian is fanatical. On the contrary, his intense religious fervor seems to have burned itself out during the Middle Ages, and has left him comparatively indifferent; yet he clings to the church with a tenacity that is out of proportion to his zeal.[2] This is due partly to the fact that he knows no other creed, partly to his conservative nature, and partly, perhaps, to the fact that the ceremonies and rites of the Catholic faith, having been moulded for the most part by his own race, are closely fitted to his temperament, and therefore continue to attract him strongly, especially on the æsthetic side. The nation is almost wholly Catholic; and to-day, as in the past, the church in Italy is assailed, not by heretics, but by her own children.

[1] Contrast with these events the Chicago riots of 1894, where not only the military authorities never superseded the judicial, but where the national troops were called into action solely by means of the United States courts.

[2] Sir Charles Dilke, in his *Present Position of European Politics* (pp. 261–262), quotes the saying that the Italians would be a nation of freethinkers if they had ever been known to think, and remarks that although the epigram is unfair, there is a certain measure of truth underlying it.

Church and State

Cavour proclaimed the doctrine of a free church in a free state; but although the church is more independent of the government than might have been expected, it was impossible to carry the principle out fully in a country where there is only one religious body, and where that body has always been intimately connected with public life. The church is not independent of the state in Italy in the same sense that it is in America; and this fact has led some of the Italian advocates of the doctrine to give it an entirely different meaning from that which it has here. They complain, for example, that the actual relation between church and state is based on the idea that the church is a private association instead of a public institution, and lament that the state has surrendered too much its control over the education of priests[1] — expressions which amount to a complaint that the church is too free. But, although the principle is not applied rigorously in Italy, it has been carried out to a considerable extent. The state has abandoned the right of nomination to ecclesiastical offices, which had existed in some of the former Italian principalities; and the bishops are no longer required to take an oath of allegiance to the king.[2] Moreover, the so-called *exequatur* and *placet*, that is, the requirement of permits from the government for the publication and execution of the acts of ecclesiastical authorities, have been given up.[3] The state has also renounced

[1] See, for example, Brusa, pp. 426–427, 429.

[2] Act of May 13, 1871, Tit. ii. Art. 15. It has been decided that in the case of the lower clergy the oath was not dispensed with wherever it had been required by earlier laws (Brusa, p. 428); and even the bishops are not entirely independent of the state, for the royal *exequatur* is still required for the enjoyment of their revenues (Id., p. 437). At times these have actually been withheld, notably in 1877. Speyer, in *Unsere Zeit*, 1878, ii. 604.

[3] Act of May 13, 1871, Tit. ii. Art. 16.

all control over the seminaries for priests in Rome,[1] and rarely interferes with those elsewhere;[2] and finally the church has been granted freedom of meeting, of publication, and of jurisdiction in spiritual matters.[3] Conversely, the acts of the ecclesiastical authorities have ceased to be privileged. They have no legal force if they are contrary to law or violate private rights, and they are not exempt from the provisions of the criminal code.[4]

The Monastic Orders

A thorny question for the new kingdom was involved in the position of the monastic orders, many of which still held great tracts of land, but had long outlived their usefulness and were felt to be an anachronism. The solution adopted, though almost a necessity, was drastic, and illustrates how far the theory of a free church in a free state was at this time from being a reality. The order of Jesuits was absolutely excluded from the kingdom;[5] and even in the case of the other bodies, which had not aroused such violent antipathy, the government determined, while sparing the existing members, to forbid the enrollment of new recruits. By the statutes of 1866 and 1867, therefore, all these monastic institutions and most of the benefices without a cure of souls were suppressed, and their property transferred to the state to be employed for the support of religion; but a pension for life was reserved to the present possessors,

[1] Act of May 13, 1871, Tit. i. Art. 13.

[2] Brusa, p. 438.

[3] Act of May 13, 1871, Tit. ii. Arts. 14, 16, 17. Religious processions outside the churches may be forbidden by the local authorities, if they are liable to interfere with public order or public health. Law of June 30, 1889, Art. 8.

[4] Act of May 13, 1871, Tit. ii, Art. 17. The Penal Code of 1888 specially punishes abuse of language by the clergy. Brusa, p. 61.

[5] Brusa, p. 56, note 4.

who were also allowed to remain in their establishments.[1] Every traveler will remember the aged monks in white habits who might be seen wandering among the cloisters of the Val d' Ema, near Florence. These were the last representatives of a mighty order that once overspread Christendom; and with the spirit of romance which Italy cannot shake off even if she would, they have been allowed to drop away one by one until the monastery becomes silent forever.

The convents were not the only great landowners in the church. Many of the higher secular clergy were also richly endowed. But there was a strong feeling that the soil of the country ought to be controlled by laymen, and that the larger ecclesiastical incomes ought to be reduced. This feeling found its expression in the same statutes of 1866 and 1867, by which all church lands, except those belonging to parishes, those used by bishops and other dignitaries, and buildings actually devoted to worship, were taken by the state and converted into perpetual five per cent annuities;[2] while all ecclesiastical revenues, not of a parochial nature, were taxed thirty per cent, or in other words partially confiscated.[3]

[1] Acts of July 7, 1866, and Aug. 15, 1867. See, also, Brusa, pp. 431–433. By an Act of 1873 these provisions were applied to Rome, but in a modified form. Brusa, *Ibid.*

[2] Act of July 7, 1866, Arts. 11–18.

[3] Act of Aug. 15, 1867, Art. 18. By the Act of July 7, 1866, Art. 31, the revenues of bishops exceeding 10,000 lire are taxed progressively for the benefit of the general fund for religion, the whole excess above 60,000 lire being so taken. But if, on the other hand, the income of a bishop falls below 6,000 lire, it is made up to that sum out of the general fund (Art. 19). Similar taxes for the benefit of the fund are imposed on other ecclesiastical revenues. In the Act of 1873, Rome was more gently treated. Brusa, pp. 432–433.

The Pope

By far the most difficult question was presented by the papacy. The Holy See had ruled over a territory of considerable size extending across the peninsula from the Mediterranean to the Adriatic. It claimed to trace its rights from a grant made in the fourth century by the Emperor Constantine the Great to Pope Sylvester, and in fact its dominion was as old and well founded as that of any monarch in Europe. It felt that the sovereignty over its own states — the so-called temporal power — was necessary for its independence, and that if the Pope lived in a city subject to another ruler he could not remain entirely free in spiritual matters. But the Italians felt no less strongly that their country would never be a complete nation until it included everything between the Alps and the sea, with Rome as its capital, and this feeling was fully shared by the Romans themselves.

The northern and eastern part of the Papal States was annexed to the new kingdom of Italy at the same time as Naples and Sicily, that is, in 1860; but Rome and the country about it were protected by Napoleon III, whose power depended so much on the support of his ultramontane subjects that he could not safely desert the cause of the Pope. Italy chafed under his interference, and waited uneasily until the war with Prussia forced him to recall his troops. Then came the revolution that overturned his throne. An Italian army at once crossed the frontier of the Papal States, and entered Rome on September 20, 1870.

The Law of the Papal Guarantees

The problem before the government was a delicate one, because any appearance of an intention to treat the Pope

as an Italian subject would have excited the indignation of the whole Catholic world, and might have led to foreign complications, or even to an armed intervention in favor of the temporal power. The cabinet determined, therefore, that a law fixing definitely the position and privileges of the Holy See should be passed before the seat of government was moved to Rome. Recognizing the peculiar relations of the Pope to other states, the ministers proposed to make this law one of international bearing, so that it would have an effect analogous to that of a treaty, but they yielded to the firm opposition of the Left in the Chamber, and the act was finally passed as a piece of domestic legislation.[1] This is the celebrated Law of the Papal Guarantees, which was enacted in May, 1871, and remains unchanged at the present day. Its object is to insure the freedom of the Pope in the exercise of all his spiritual functions, and for that purpose it surrounds him with most of the privileges of sovereignty. His person is declared sacred and inviolable; assaults or public slander directed against him being punishable like similar offenses against the King. Public officials in the exercise of their duties are forbidden to enter his palace or its grounds; and the same exemption applies to the place of meeting of a Conclave or Œcumenic Council. Searching any papal offices that have solely spiritual functions, or confiscating papers therefrom, is prohibited, and it is provided that priests shall not be punished or questioned for publishing, in the course of their duties, the acts of the spiritual authority of the Holy See. The Pope is accorded the honors of a sovereign prince, and persons accredited to him enjoy all the immunities of diplomatic agents. He is guaranteed free intercourse with the bishops, and indeed with the whole Catholic world, mes-

[1] Petruccelli della Gattina, *Storia d' Italia*, pp. 93–94.

sages sent in his name being placed on the same footing as those of foreign governments. Moreover, he is granted a perpetual annuity of over six hundred thousand dollars, which is entered in the great book of state debts, and is free from all tax. This grant he has always refused to accept, and every year it is returned to the treasury. Finally he is left in absolute possession of the palaces of the Vatican, the Lateran, and Castel Gandolfo, with all their buildings, gardens, and lands, free of taxes.[1]

It will be observed that this law — which is alleged, by the way, to have been faithfully carried out by the Italian government — assures to the Pope absolute freedom in the exercise of his functions as head of the Catholic Church, and guards him against all personal disrespect. Nevertheless, neither Pius IX nor his successors accepted it; and indeed they could not have done so without acknowledging the authority of the government by which it was enacted, and this they have never been willing to do. They have not ceased for a moment to protest against the destruction of the temporal power. The Pope has affected to consider himself a prisoner, and never since the royal cannon opened a breach in the Roman walls at the Porta Pia has he placed his foot outside the grounds of the Vatican.[2] He long refused to allow the clerical party to vote for deputies to Parliament, on the ground that this would involve a tacit acknowledgment of the legality of the existing government; and thus a large portion of the Italian people took no part in national politics, although the same men voted freely

[1] There is a criticism of the legal situation of the Holy See from a papal standpoint by Comte Rostworowski, entitled "La Situation Internationale du Saint-Siège," in the *Ann. de l'Ecole Libre des Sciences Politiques*, 1892, p. 102.

[2] Until 1888 he did not even appear in St. Peter's.

and sometimes won victories at municipal elections.[1] Such a condition of things was very unfortunate, for it tended to create a hostility between religion and patriotism, and made it very hard for a man to be faithful both to his church and his country. If the Italians had any liking for other sects, these would no doubt increase rapidly; but as religion and Catholicism are synonymous terms in Italy, the antagonism between church and state merely stimulates skepticism and indifference.

Difficulty of the Question

It is not easy to see how the papal question will finally be solved. Pope Leo XIII was a man of great tact, and with marvelous dexterity he changed the policy of the Vatican so as to bring it into harmony with the nineteenth century. He made a peace with Bismarck by which the Iron Chancellor virtually acknowledged defeat; and by his conciliatory tone towards the French Republic he made fair headway in checking the Radicals in France with their hatred of the church. Yet even Leo XIII was unable to come to terms with Italy. One thing is clear. Italy will never give up Rome, nor is there the slightest probability that any foreign country will try to force her to do so; and, indeed, it is said that even in the Vatican the restoration of the temporal power is considered hopeless. To the outside observer it hardly appears desirable in the interest of the papacy itself, because with the loss of its secular functions, the Holy See has gained greatly in ecclesiastical authority. This is not an accident, for the destruction of the temporal power is one step in the long movement for the separation of church and state, which during the last hundred years has been breaking the local and national ties

[1] In 1905 an encyclical of Pius X somewhat relaxed the prohibition.

of the clergy in the different countries, and has thus made the Catholic Church more cosmopolitan, more centralized, and more dependent on its spiritual head. Such, however, is not the view of many ardent Catholics, who are so dissatisfied with the present situation that a departure of the Pope from Rome has often been suggested; but although on more than one occasion a removal has been said to be imminent, it has always been in the highest degree unlikely, for the Holy See could not get from any other state in whose territory it might settle terms more favorable than those accorded by the Law of the Papal Guarantees; and even if it should accept a grant of complete sovereignty over some island or small tract of land, the loss in prestige from the change of residence would be incalculable. The veneration of the past still clings to Rome, and although the civic splendor of the Vatican is gone, the Pope bereft of his temporal power wields a greater spiritual influence than he has had for centuries.

Fascism

There is something ironical in the fact that, after a war fought to make the world safe for democracy, many countries should turn to dictatorships. Yet such has been the history of Soviet Russia, of Greece, of Hungary, of Spain, and of Italy. Discontented with party bickerings and subdivisions, which made stable and efficient administration impossible, the Italians have resorted to rule by minority, whether that minority has its source in the Right or the Left. Worn out by the burdens of the war, and the economic reaction which followed, many elements in Italy turned to the parties with extreme opinions to extricate the country from the slough into which it had fallen. In the fall of 1921 a virtual social revolution took place when

the workmen forcibly took over the management of a large number of plants and factories; and in September, the National Labor Convention, a body representing about 1,200,000 laborers, declared itself in favor of organizing Italian industry upon a soviet basis. For a time, the government remained inactive in this controversy; but, later, it summoned employers and employees to a conference where the former agreed to let the workmen participate in the management of industry.

This dominance of the industry of the country by the Socialists, and the impotence of the government to handle the situation, led to the rise of a new and equally vigorous party, called the Fascisti. Its leader, Mussolini, had been a Socialist, and much influenced by the doctrines of violence preached by Georges Sorel and other syndicalists before the war. Strongly nationalistic, the Fascisti believed that social reform should await real national unity [1] and that communism in Italy tended to weaken the nation. They were not, however, opposed to the organization either of labor or of capital, since they proposed to unite both elements in national corporations, which should reorganize the industrial life of the community upon a basis similar to that advocated by guild socialism, the corporations to be combined in a national confederation.[2]

Believing that the best weapon against violence was violence, the Fascisti, under the leadership of Mussolini, organized a militia — known from their garb as the Black Shirts — which engaged in bitter struggles with the Communists. Socialist mayors were forced to resign, while at the same time shopkeepers were required to reduce their prices,

[1] Odon Por, *Fascism*, p. 28. Cf. Count Carlo Sforza, "Italy and Fascism," *Foreign Affairs*, April, 1925.

[2] For the statutes of this confederation, cf. Por, Appendix III.

and men who resisted the demands of the Black Shirts were treated with doses of castor-oil, if nothing worse. So active did the Fascisti become in 1922, that the Facta government became powerless to maintain order, and was voted out of office by Parliament. Mussolini declared that there were two governments in Italy, "a fictitious one conducted by Facta and a real one by the Fascisti." [1] The statement was true, and when the latter made a demonstration by marching to Rome for a great parade, the King wisely asked Mussolini to form a government. With the Black Shirts at his back, Mussolini overawed the Parliament. Nearly half the members absented themselves, and the rest gave him a vote of confidence, with full power to reorganize the finances and simplify them; to balance the budget and distribute better the tax burdens; to curtail expenses by reducing the functions of the state; and to reform the public offices and institutions with a view to greater efficiency. Moreover, his government was given authority, until December 31, 1923, to issue "dispositions" having the force of law.[2]

By virtue of these powers Mussolini effected a large number of administrative reforms. The functions of the ministries of agriculture, trade, and industry and labor were absorbed by a new minister of national economy; while the ministry of posts and telegraphs, and the commissariat for the railways and merchant marine, were merged into a new ministry of communications.[3] The number of officials employed in the public services was ruthlessly reduced, and the government claimed to have extinguished the deficit in the railways and in the postal and telegraph services.

[1] *Record of Political Events*, 1922–23, p. 104.

[2] Cf. Carleton Beals, *Rome or Death*, p. 313.

[3] *Record of Political Events*, 1924–25, p. 157. Mussolini also established a National Council of Labor and Production, similar to the German Economic Council. Cf. Beals, p. 335.

No doubt, the labor disorders were suppressed and the material condition of the country improved under this autocratic management. But even Mussolini realized, in theory at least, that, in order to endure, his government must rest upon a basis of law instead of force. He therefore introduced an electoral law, which Parliament finally passed, based upon an entirely new principle of substituting a representation of the nation as a whole for independent election by geographical districts.[1] It can hardly be called proportional, but rather disproportionate, representation, for, instead of allotting to each party at the election a number of seats in the ratio of the votes cast by its adherents, it provided that the party polling the largest number of votes at a general election, if not less than 25 per cent of the total, should elect two thirds of the members of the Chamber of Deputies, the remaining third to be allotted to the other groups in proportion to the votes each had polled. Thus if the Fascisti received more than any other group, and a quarter of the votes cast, — as they were certain to do, — they would control two thirds of the Chamber and govern without fear of parliamentary opposition. In theory the law was aimed at the evils of a number of small groups, by a device that would always give to a single party a coherent majority of the deputies. But its real object was to secure in power what might prove to be a minority of the electorate. It provoked so much dissatisfaction that in December, 1924, Mussolini announced that a new electoral law would be proposed, repealing the provision giving to the largest party two thirds of the seats, and restoring the election by single member districts; a change

[1] In 1919 an electoral law had been passed introducing *scrutin de liste* with proportional representation; and another, passed in Dec., 1920, had provided for universal suffrage of both men and women.

that was made by the Parliament in January, 1925. The return to the old system will not shake Mussolini's position so long as his followers can, by intimidation or otherwise, control elections.

His government is in fact based on intimidation and force. In 1924 he resorted to a censorship of the press; and in a speech in the latter part of December of that year he disclaimed any intention of conciliating, or compromising with, his opponents. A people that has tasted self-government sometimes turns to autocratic rule supported by force as an escape from disorder, but in modern times has not been satisfied with it long. No doubt Mussolini understands this, but the difficulties he faces are very great. A Chinese proverb asserts that he who rides on a tiger cannot dismount. He cannot bring about a reign of law if his followers remain organized for violence. At present he cannot do without them, nor does it seem possible to disband or control them. The future no one can foresee.[1]

[1] Mussolini appointed a committee to study reforms in the constitution which in May, 1925, reported in favor of virtually doing away with the responsibility of the cabinet to Parliament. It proposed that a ministry defeated in the Chamber might appeal to the Senate, the final decision to be given by a joint sitting of the two bodies. It reported also that three hundred members of the Chamber should be elected in the ordinary way, and three hundred by organizations of workmen and others. — N. Y. Times, May 8, 1925.

CHAPTER IX

GERMANY: STRUCTURE OF THE EMPIRE

Former Subdivision of Germany

CHERBULIEZ has remarked that most countries which have grown in size have started with a compact territory and increased it by absorbing the adjacent lands, but that Prussia began with her frontiers and afterwards filled in between them. The statement is almost literally true, for early in the seventeenth century the electors of Brandenburg, who were the ancestors of the kings of Prussia, acquired the large Duchy of Prussia on the Baltic and the Duchy of Cleves on the Rhine, possessions which formed very nearly the extreme limits of the Prussian monarchy on the east and west. At that time these duchies did not touch the electors' other territories, and in fact until half a century ago several states were so wedged in among the Prussian dominions as to cut the kingdom quite in two. Nor was this the case with Prussia alone. The whole map of Germany in the eighteenth century was a mass of patches of different color mingled together in bewildering confusion. Not only were some of the principalities inconceivably small, but they often consisted in part of outlying districts at a distance from one another, and entirely surrounded by the estates of some other potentate. The cause of such a state of things is to be found in the excessive development of the feudal system, which treated sovereignty as a private right of the ruler, so that princes dealt with their fiefs very much as men do with their lands to-day. They acquired them freely in all direc-

tions by inheritance, by marriage, and even by purchase, and, what was worse, at their death they divided them as they pleased among their sons. Still another source of confusion was presented by the bishops and other high church dignitaries, who held large estates which they ruled as temporal sovereigns. The result was that Germany was divided in a most fantastic way among several hundred princes, who owed, it is true, a shadowy allegiance to the Emperor as head of the Holy Roman Empire, but for all practical purposes were virtually independent.

The Growth of Prussia

Almost alone among the German states Prussia was steadily gaining in size and power. Her growth may be traced primarily to the *Constitutio Achillea* of 1473, which forbade the splitting up of the monarchy among the sons of the Electors, and thus kept all their dominions together; but it was due chiefly to the thrift, the energy, and the sagacity of the rulers of the House of Hohenzollern. At the close of the thirty years' war, in 1648, the Great Elector obtained possessions which made his domains larger than those of any other German state except Austria, and in the next century the annexations of Frederic the Great more than doubled the population of his kingdom. The growth of Prussia was suddenly checked by an event that tended ultimately to hasten its development. This was the outbreak of the French Revolution and the career of Bonaparte. When a series of victories had laid Germany at his feet, Napoleon suppressed a large number of petty principalities, including all the ecclesiastical ones, and combined the smaller states that remained into the Confederation of the Rhine. He also deprived Prussia of half her territory, thinking by these means to reduce her to impotence, and create

in the heart of Germany a body that would always be devoted to the cause of France. But in fact the petty principalities had been too small to act separately or to combine effectively, and too independent to be made serviceable by any sovereign; and by suppressing them Napoleon had given the Germans a capacity for organization which was used against him as soon as the tide turned.[1]

The Germanic Confederation

After his overthrow Germany was reorganized by the treaty of Vienna, and the states, which now numbered only thirty-nine, were formed into a loose confederation. This was not properly a federal union, but rather a perpetual international alliance, the states remaining separate and independent, except for matters affecting the external and internal safety of Germany. The only organ of the Confederation was a diet composed of the diplomatic agents of the different states, who acted like ambassadors, and voted in accordance with the instructions they received from their respective governments. It had power to declare war and make peace, to organize the federal army, — in reality state troops, — to enact laws for the purpose of applying the constitution, and to decide disputes between the states; but it had no administrative officers under its command, the federal laws being executed entirely by the officials of the states. Hence the only means of getting its orders carried out in case a state refused to obey them was by the process known as federal execution, which meant that the diet called on one or more members of the Confederation to attack the

[1] This is very well stated by Colonel Malleson in his *Refounding of the German Empire*, pp. 4–6. Napoleon prophesied that within fifty years all Europe would be either Republican or Cossack. One of the chief causes of the failure of this prediction has been the creation of a united Germany which Napoleon himself unwittingly helped to bring about.

recalcitrant state, and by invading its territories to compel submission.

The procedure in the diet was complicated. For ordinary matters it acted by sections called *curiæ*, when the eleven largest states had one vote apiece, the other twenty-eight being combined into six groups each of which had a single vote. For constitutional questions, on the other hand, and those relating to peace and war, the diet proceeded *in plenum*, and in that case each of the smaller states had one vote, while the fourteen largest had two, three, or four votes apiece.[1] This distribution of votes was by no means in proportion to population, for the largest states were much more than four times as large as the smallest, but it was a distinct recognition of an inequality of rights on the part of the states, and as such it still retains an especial importance because the arrangement of the votes in the *plenum* continued almost unchanged in one of the chief organs of the German Empire. It must not be supposed, however, that the influence of the states in the diet was determined by the number of their votes, for Austria, which had a permanent right to the presidency of the assembly, and Prussia, which had a permanent right to the vice-presidency, exercised in fact a controlling authority. When these two great powers agreed, they had their own way; when they disagreed, which often happened, the opinion of Austria usually prevailed.

The Attempt at Union in 1848–49

The wars of Napoleon did a great deal more for Germany than to suppress petty principalities and give rise to a clumsy confederation. They awakened a sentiment of German nationality. At first this was only a sentiment, and for

[1] Six of the states had four votes, five had three, three had two, and twenty-five had one.

a long period it had no practical results. It was especially strong among the Liberals, and grew stronger as time went on; but during the reaction that followed the overthrow of Napoleon, the Liberals had little influence, until the convulsions of 1848 and 1849 brought them to the front. At this time they tried hard to bring about a national union of Germany, but they were sadly hampered by their theoretical views and their want of political experience. Their aim was a German state constructed on an ideal model, and they lacked the quality which is essential to real statesmanship — the power to distinguish the elements in the existing order of things which have a solid basis, to seize upon these, and adapt them to the end in view. Hence their efforts expended themselves in declamation and academic discussion, and came to nothing. In May, 1848, they succeeded in bringing together at Frankfort a National German Parliament elected by universal suffrage, and if this body had proposed quickly any rational plan for a union of Germany, the chances of its adoption would have been very good; for every government in the country had been forced to give way before the fierce onslaught of the Liberal movement. But unfortunately more than four months of precious time were consumed in debating the primary rights of the citizen, and when these were finally disposed of the tide was beginning to ebb. At last, in March, 1849, a constitution was agreed upon, and the imperial crown was tendered to the King of Prussia; but the offer came too late. Had it been made in the preceding summer it might have been accepted, but now the revolution had spent its force. Austria, at first paralyzed by insurrection, had now recovered from the shock, was rapidly putting down her rebellious subjects, and under the able leadership of Prince Schwartzenberg was determined to prevent any reorganization of Germany that

would diminish her influence. After a feeble struggle Prussia yielded to her more determined rival, the revolutionary movement came to an end, and the old Confederation was restored.

Bismarck

Again a period of reaction set in, which lasted about ten years, when Germany was thrilled by the events in Italy, and the Liberals again became powerful. Whether they would have avoided their former mistakes and succeeded better it is impossible to say, for just at this time there appeared upon the scene a man who was destined to stamp his will on Germany, and change the whole face of European politics. That man was von Bismarck. He belonged to the lesser Prussian nobility, which is the most conservative class in the race; but he was of far too large a calibre to be bound down by traditional prejudices; and indeed he had already formed very decided opinions of his own on the subject of German unity. He had served as a representative of Prussia at the diet, and had learned that a German nation was impossible so long as the two great powers — Austria and Prussia — were contending for a mastery. He saw that the first step must be the forcible expulsion of Austria from all share in German politics; and he believed that union could never be brought about by argument, that the Germans could not be persuaded, but must be compelled to unite, that the work must be done, as he expressed it, by blood and iron.

The Constitutional Conflict

An important advance towards closer relations between the States had, indeed, been made long ago by the creation of the Zollverein or customs union. This had been founded by Prussia in the early part of the century, and had grad-

ually been extended until it included almost all the German states except Austria, which had been jealously excluded by the Prussian statesmen; but valuable as the Zollverein was in teaching the people their common interests, Bismarck was convinced that no further progress could be expected without the use of force. Now it was precisely on this point that his methods differed from those of the Liberals, because war formed no part of their programme, and for that reason they were unable to understand his policy. In 1859 they had obtained a majority in the lower house of the Prussian Parliament, and had very soon become involved in a quarrel with King William over the reorganization of the army on which he had set his heart.[1] In 1862 the King turned to Bismarck and made him the President of the Council. Bismarck submitted to the chamber a budget containing the appropriations for the military changes, and when the chamber refused to pass it he withdrew it, and governed without any budget at all. This he was enabled to do, because the taxes were collected under standing laws which required no reënactment, and in fact could not be changed without the consent of the crown; and because a doctrine was developed that in case the king and the two houses were unable to agree upon appropriations, the king was entitled to make all those expenditures which were necessary in order to carry on the government in accordance with the laws regulating the various branches of the administration. The Liberals were furious at this budgetless rule, but Bismarck proceeded in spite of them. He persuaded Austria to join Prussia in wresting the duchies of Schleswig and Holstein from Denmark in 1864, and then contrived to quarrel with her about the disposition to be made of them. The majority in the

[1] William became Regent on Oct. 7, 1858, and on the death of his brother Frederick William IV, on January 2, 1861, he became King.

German diet sided with Austria, and ordered the troops of the Confederation mobilized against Prussia. Then followed the war of 1866, and the crushing defeat of Austria and the smaller German states that took her part.

The North German Confederation

Bismarck had originally intended to compel all the states except Austria to form a federal union, but the intervention of Napoleon III forced him to abandon the plan and limit the Confederation to the country north of the river Main.[1] He therefore determined as a compensation to increase the direct strength of Prussia by annexing the states that had fought against her.[2] Hanover, Electoral Hesse,[3] Nassau, and Frankfort, besides Schleswig-Holstein, were accordingly incorporated in Prussia, while with the other states north of the Main a new federal union was formed under the name of the North German Confederation.[4] This had for its president the Prussian king; and for its legislature two chambers — one the Reichstag, a popular assembly elected by universal suffrage, and the other the Bundesrath, or federal council, which was copied from the old diet, and composed in the same way of the plenipotentiaries of the different states, but was endowed with peculiar and extensive powers. Austria was excluded from all participation in German

[1] Luxemburg, and Limburg which belonged to Holland, had been a part of the old Confederation, but were allowed to drop out at this time, and were not included in the reorganization of Germany. This was true also of the tiny principality of Lichtenstein in the south.

[2] Von Sybel, *Begründung des Deutschen Reiches*, book xix, ch. ii.

[3] Also called Hesse-Cassel to distinguish it from Hesse-Darmstadt or grand-ducal Hesse, which, being the only Hesse remaining in existence as a separate state, is hereinafter called simply Hesse.

[4] The constitution of the Confederation was first agreed upon by the governments of the several states, then accepted with slight modifications by a National Assembly elected by universal suffrage for the purpose, and finally ratified by the legislatures of the states.

politics; while the four States south of the Main — Bavaria, Wurtemberg, Baden, and Hesse [1] — became independent, and were expressly left at liberty to form a separate union among themselves. As a matter of fact, they made offensive and defensive alliances with the Confederation, and formed with it a Zollverein or customs union, whose organs were the two chambers of the Confederation reinforced by representatives from the southern states. Every one felt that the union of Germany was incomplete so long as these states were not a part of it; but Bavaria and Wurtemberg were reluctant to surrender their independence; and the enthusiasm aroused by the war with France in 1870 was required to raise the sentiment for German nationality to such a pitch as to sweep them into line. Even then they demanded and obtained special privileges as the price of their adhesion; but at last all the difficulties were arranged, and in the autumn of 1870 treaties were made with the four southern states whereby they joined the union. The name of the Confederation was changed at the same time to that of "German Empire," the president being given the title of Kaiser; and in the course of the following winter the changes and additions entailed by these treaties were embodied in a new draft of the constitution.[2]

[1] This is Hesse-Darmstadt. It lay on both sides of the Main, but the part on the north of that river was already included in the North German Confederation.

[2] Cf. Laband, *Deutsches Staatsrecht*, 2d ed., ch. i. In 1873 three amendments were made in this instrument. The first (that of Feb. 25) abolished the provision limiting the right to vote in the Reichstag, on those matters which by the constitution are not common to the whole Empire, to the representatives of the states affected. The second (that of March 3) put the lighthouses, buoys, etc., along the coast under the control of the federal government; and the third (that of Dec. 20) extended the legislative power of the Empire over the whole field of civil and criminal law. It had previously covered contracts, commercial law, and criminal law. In 1888 (Art. 24), an amendment was adopted changing the term of the Reichstag from three

The Constitution of the Empire

This instrument has nothing about it that is abstract or ideal. It was drawn up by a man of affairs who knew precisely what he wanted, and understood very well the limitations imposed upon him, and the concessions he was obliged to make to the existing order of things. His prime object was to create a powerful military state; and hence, as has been pointed out, the articles on most subjects were comparatively meagre, but those on the army, the navy, and the revenue were drawn up with a minuteness befitting the by-laws of a commercial company.[1]

to five years. In 1893 (Art. 53, § 5), an amendment was adopted about the method of conscription for the navy. In 1904 (Art. 70), the article on the finances was amended to authorize levying contributions on the states, in addition to federal taxes. In 1905 (Art. 59, § 1), the article on compulsory military service was changed, chiefly to substitute two for three years of active service. In May, 1906 (Art. 32), an amendment was made permitting the payment of members of the Reichstag; and in June of the same year (Art. 38, § 2), an amendment was made about the allowance to the states for the cost of collecting the excise on beer. In May, 1911 (Art. 6a), an article was added virtually making Alsace-Lorraine a member of the Confederation; and in December, 1911 (Art. 54), a change was made about the tolls chargeable for improvements in navigation.

Substantial changes in the fundamental law of the Empire have been made without a formal modification of the text. (See Laband, i. 48–49, 51.) Some of the German jurists maintain that such a practice is wrong (von Rönne, *Staatsrecht des Deutschen Reiches*, 2d ed., pp. 31–34; Meyer, *Lehrbuch des Deutschen Staatsrechts*, p. 416); others that it is quite proper, provided the majority required in the Bundesrath for a formal amendment of the constitution is in fact obtained. (Laband, i. 545–549; Arndt, *Verfassung des Deutschen Reiches*, pp. 290–291.)

[1] Lebon, *Etudes sur l'Allemagne Politique*, Introd., p. iii.

Amendments to the constitution could be made by a majority vote in the Reichstag, but were vetoed by fourteen adverse votes in the Bundesrath.

Nature of the Confederation

Before proceeding to a description of the organs of the state, it will be worth while to examine the nature of the Confederation. We are in the habit of speaking of the German Empire as a federal government, and rightly; but we must bear in mind that it departed essentially from the type which we commonly associate with that term, and which is embodied in our own constitution. We conceive of a federal system as one in which there is a division of powers between the central government and the states according to subjects, so that in those matters which fall within the sphere of federal control the central government not only makes the laws, but executes them by means of its own officials. Thus Congress enacts a tariff; the United States custom house collects the duties; and the federal courts decide the questions that arise under the law. But all this was very different in Germany. There the legislative power of the central government was far more extensive than in this country, for it included almost everything that is placed under the control of Congress and many other matters besides. In addition to such subjects as customs duties and taxes, the army and navy, the consular service, and the protection of foreign commerce, which are obviously essential, the list comprised many matters of domestic legislation. It covered not only the posts and telegraphs,[1] transportation on streams running through more than one state, and extraditions between the states, but also in general terms railroads,[2] roads and canals, citizenship, travel, change of residence, the carrying on of trades, also the regulation of weights and measures, of coinage and paper money, of banking, patents, copyrights, and of medical and veterinary police. Moreover, it

[1] Except in Bavaria and Wurtemberg.

[2] Except in Bavaria.

included the regulation of the press and associations, and finally the whole domain of ordinary civil and criminal law and of judicial proceedings. All these things were declared subject to imperial legislation and supervision.[1]

The administrative power of the Empire, on the other hand, was very small, the federal laws being carried out in the main by the officers of the states as under the Confederation of 1815. Except, indeed, for foreign affairs, the navy, and to some extent the army, and the postal and telegraphic service, the executive functions of the Empire were limited for the most part to the laying down of general regulations, and a supervision of their execution by the several states.[2] Thus the federal government could enact a tariff, make regulations which should govern the customhouse officers, and appoint inspectors to see that they were carried out; but the duties were actually collected by state officials.[3] One naturally asks what happened if a state refused or failed to carry out a federal law. The matter was reported to the Bundesrath, which decided any controversy about the interpretation of the law.[4] But suppose the state persisted in its refusal to administer the law, what could the federal government do? It could not give effect to the law itself, nor had it

[1] Art. 4 of the constitution and the amendment of Dec. 20, 1873.

[2] See Laband, § 66. In the case of the army (Const. Arts. 63–66) and the posts and telegraphs (Art. 50), the highest officers were appointed by the Kaiser, who gave them their orders, while the subordinates were appointed by the states.

[3] As a rule the whole net revenue flowed into the imperial treasury. In case the receipts of the Empire were not equal to its expenses, the deficiency was covered by means of contributions called *Matricularbeiträge* assessed on the different states in proportion to their population. (Const. Art. 70, and see Laband, 6th ed., § 45.) This was originally intended to be a subsidiary and exceptional source of revenue, but owing to the quarrel between Bismarck and the Reichstag on the subject of federal taxation, the Matricularbeiträge became large for many years. (Cf. Lebon, *Allemagne*, p. 106 *et seq.*)

[4] Const. Art. 7, § 3.

any officials for the purpose. Its only resource was federal execution — that is, an armed attack on the delinquent state — which could be ordered by the Bundesrath, and carried out by the Kaiser.[1] This last resort was never used, nor was it likely to be, because the Kaiser was also the King of Prussia, and Prussia alone is not only larger than any other state, but larger than all the rest put together. Execution against Prussia was therefore doubly out of the question; and any other state would be so easily overpowered that it was certain to submit, rather than provoke an appeal to force.

The Privileges of Prussia

Another conception that we associate with federal government is an equality of rights among the members. But in the German Empire all was inequality. It would, indeed, have been impossible to make a federation on really equal terms between a number of states, one of which contained three fifths of the total population, while the other twenty-four contained altogether only two fifths. The compact could not fail to resemble that between the lion and the fox, or rather a compact between a lion, half a dozen foxes, and a score of mice. The larger states were accorded all sorts of privileges, and so much of the lion's share of these fell to Prussia that it is hardly too much to say that she ruled Germany with the advice and assistance of the other states. In the first place she had a perpetual right to have her king the Kaiser.[2] Secondly, amendments to the constitution — although requiring only an ordinary majority vote in the Reichstag — were defeated in the Bundesrath if fourteen negative votes were thrown against them, and

[1] Const. Art. 19, and see Laband, i. 105–106.

[2] Const. Art. 11.

as Prussia had seventeen votes in that body, she had an absolute veto on all changes of the constitution.[1] Besides this, it was expressly provided that in the case of all bills relating to the army, the navy, the customs duties, or the excises, and in the case of all proposals to revise the administrative regulations for collecting the revenue, the vote of Prussia in the Bundesrath was decisive if cast in favor of maintaining the existing institutions.[2] In other words, Prussia had a veto on all measures for making changes in the army, the navy, or the taxes. She had also the casting vote in case of a tie in the Bundesrath,[3] and the chairmanship of all the standing committees of that body.[4]

These were Prussia's constitutional privileges; but she had others obtained by private agreement with her smaller partners; for the several states were at liberty to make conventions or treaties with each other in regard to the affairs that remained subject to their control.[5] When the North German Confederation was formed, universal military service and a uniform organization like that of Prussia were introduced into all the states, but the army was not made

[1] Const. Art. 78. In the North German Confederation a two thirds vote in the Bundesrath was necessary for a change in the constitution, but when the South German states were admitted, Prussia had no longer a third of the delegates, and in order to preserve her veto the proportion required was increased to three quarters. Finally at the instance of Bavaria, which wanted to enlarge the power of the states of the second size, it was agreed that fourteen negative votes should be enough to defeat an amendment to the constitution. Arndt, p. 290; Robinson, *The German Bundesrath*, p. 40.

[2] Const. Arts. 5, 35, and 37.

[3] Const. Art. 7.

[4] Const. Art. 8; Laband, i. 264. Except the committee on foreign affairs, where, as will be explained hereafter, it would be of no use to her.

[5] Laband, § 63. To some extent the states were at liberty to make separate conventions with foreign powers, and they had a right to send their own representatives to foreign courts. Laband, § 71.

exclusively a national nor left entirely a state institution.[1] The constitution provided that the military laws should be made by the Empire,[2] and declared that the forces of the country should be a single army under the command of the Kaiser, whose orders they were bound to obey. It gave him a right to inspect and dispose of the troops, and to appoint all officers whose command included the entire contingent of a state. It provided also that the selection of the generals should be subject to his approval, but it left to the states the appointment of all inferior officers, and the management of their troops in other respects. Now these reserved rights were of little value, and all but three of the states transferred them to Prussia, chiefly in consideration of an agreement on the part of the Kaiser not to remove the troops from their own territory except in case of actual necessity. Thus the contingents of these states were recruited, drilled, and commanded by Prussia, and formed, in short, an integral part of her army.[3]

[1] Const. Arts. 57–68. The last eight of these articles did not apply to Bavaria, and only partially to Wurtemberg. The expense of maintaining the army was borne by the Empire. Unlike the army, the navy was a purely national institution. Art. 53.

[2] The double position of the Prussian monarch comes out curiously here, for the constitution provided: first, that the military laws and regulations of Prussia should be in force throughout the Empire, until a comprehensive imperial military law should be enacted; and second that any future general orders of the Prussian army should be communicated by the military committee of the Bundesrath to the commanders of the other contingents for appropriate imitation.

[3] Some of the states transferred all their rights (Baden with a provision that her troops should form a separate corps); others retained certain rights, mainly of an honorary nature, but agreed that their troops should be united with the Prussian army, and that Prussia should appoint the officers. Only Bavaria, Saxony, and Wurtemberg still exercised the military functions reserved to them by the constitution. Cf. Laband, § 94, iii; Schulze, *Lehrbuch des Deutschen Staatsrechts*, § 335; Meyer, *Lehrbuch*, § 197.

A number of conventions of a similar character affecting other public matters, such as the postal service and the jurisdiction of the courts, were concluded between the states; but the most comprehensive compact of all was made by Waldeck. The ruler of this little principality was crippled with debts, and unable to raise the money required for the reorganization of his army. So he sold his governmental rights as a whole to the King of Prussia, retired from business, and went to Italy to live upon his income; while the Prussian government, having bought the goodwill of his trade, proceeded to carry it on as his successor. There is something decidedly comical in treating the right to govern a community as a marketable commodity, to be bought and sold for cash; but to Bismarck the matter presented itself as a perfectly natural business transaction, and in fact the contract bears a strong resemblance to the lease of a small American railroad to a larger one.

Privilege of Other States

Such were the special privileges of Prussia. Those reserved to the other states were far less extensive. By the constitution Hamburg and Bremen had a right to remain free ports, outside of the operation of the tariff laws;[1] but both of them surrendered this privilege.[2] The other special rights were mostly enjoyed by the southern states, and were given to them as an inducement to join the Confederation. Thus Bavaria, Wurtemberg, and Baden were exempted from imperial excises on brandy and beer, and given a right to

[1] Const. Art. 34.

[2] The treaty for this purpose was made with Hamburg in 1881, and went into effect Oct. 1, 1888. That with Bremen was made in 1885. For an account of these treaties and the way they were brought about, see Blum, *Das Deutsche Reich zur Zeit Bismarck's*, p. 360 *et seq.*; Laband, ii. 901–904.

lay excises of their own on these articles.[1] Bavaria and Wurtemberg had their own postal and telegraph services, which were subject only to general imperial laws.[2] Except for the principle of universal military service, and the agreement to conform to the general organization of the imperial army, Bavaria had in time of peace the entire charge of her own troops, the Kaiser having only a right to inspect them; while Wurtemberg, although not so much favored as this, had greater military privileges than the remaining states.[3] Bavaria was further exempt from imperial legislation in regard to railroads,[4] and to residence and settlement;[5] and finally, by the constitution or by military convention, Bavaria, Saxony, and Wurtemberg had a right to seats on the committees of the Bundesrath on foreign affairs and on the army and fortresses. In order to guarantee more effectually these privileges, it was provided that they should not be changed without the consent of the state entitled to them.

The Empire and the Old Confederation

From this description of the privileges of the different states it is evident that the German Empire was very far from being a federal union of the kind with which we are familiar. It was rather a continuation of the old Germanic Confederation, with the centre of gravity shifted from the states to the central government, and the preponderating

[1] Const. Art. 35. But in 1887 they gave up their privileges in regard to brandy. See Blum, p. 532; Laband, ii. 920, 923–924.

[2] Const. Art. 52.

[3] Treaties of Nov. 23, 1870, with Bavaria; and Nov. 25, 1870, with Wurtemberg; incorporated in the constitution by a reference in the Appendix to Part XI.

[4] Except in the case of lines that have a strategic importance. Const. Art. 46.

[5] Const. Art. 4, § 1.

power placed in the hands of Prussia — the other large states retaining privileges roughly in proportion to their size.[1]

Its chief organ of government was still the old diet, renamed the Bundesrath or Federal Council, to which had been added on one side a Kaiser, who was commander-in-chief of the forces, and represented the Empire in its relation with foreign powers; and, on the other, an elected chamber, called the Reichstag, created for the sake of stimulating national sentiment and enlisting popular support as against the local and dynastic influences which had free play in the Bundesrath.

The Kaiser

The title borne by the Emperor seems to imply an hereditary sovereign of the Empire, but from a strictly legal point of view this was not his position. He was simply the King of Prussia, and he enjoyed his imperial prerogatives by virtue of his royal office. There was, in fact, no imperial crown, and the right to have her King bear the title, and exercise the functions of Kaiser, was really one of the special privileges of Prussia. The language of the constitution was: "The presidency of the union belongs to the King of Prus-

[1] In saying this I am speaking only of the political structure of the government, and do not mean to touch the philosophical question whether the sovereignty had or had not been transferred from the states to the Empire. This point has been the subject of elaborate argument, and in fact the same juristic questions about the origin and nature of the federal government have been discussed in Germany as in the United States. (For a reference to these discussions, see Laband, i. 30–33, 52 *et seq.*, and see especially Jellinek, *Die Lehre von den Staatenverbindungen.*) Some of the German publicists maintain that the sovereignty resided in the Bundesrath, a view which, as Burgess points out in his *Political Science* (ii. 90–93) is somewhat artificial. For those who think as I do, that sovereignty is not in its nature indivisible, the question loses much of its importance. (Cf. *Essays on Government*, chapter on the Limits of Sovereignty.)

sia, who bears the title of German Kaiser." This state of things was by no means so confusing to the Germans as might be supposed; for it was not really a case of one man holding two distinct offices, but of the addition of certain imperial functions to the prerogatives of the King of Prussia.

The Chancellor

There was no imperial cabinet, and the only federal minister was the Chancellor, who had subordinates but no colleagues.[1] The reason for this is to be found partly in Bismarck's personal peculiarities, and partly in the nature of the ties that bind Prussia to the Empire. In the first place, Bismarck preferred to stand alone, and did not want to be hampered by associates. He had had experience enough of the Prussian cabinet, where each of the ministers was highly independent in the management of his own department, and he did not care to create for himself a similar situation in imperial matters. After he had decided on a course of action, he hated, as he said, to waste his time and strength in persuading his colleagues, and all their friends and advisers, that his policy was a wise one. Hence he would not hear of an imperial cabinet.[2] In the second place, he did not originally intend to have any federal ministers at all. According to his plan the general supervision and control of the administration was to be exercised by the Bundesrath, while those matters — such as military and foreign affairs — which from their nature must be entrusted to a single man, were to be conducted by the King of Prussia as President of the Confederation, all others being left

[1] Laband, i. 348; and see § 40.

[2] Cherbuliez, *L'Allemagne Politique*, 2d ed., pp. 228–229. Meyer, in his *Grundzüge des Norddeutschen Bundesrechts* (pp. 88–97), discusses Bismarck's objections to a collegiate ministry.

in the hands of the several states. The Chancellor was to be a purely Prussian officer, who should receive his instructions from the King, and be responsible to him alone.[1] This plan is very interesting, because, although in form it was not accepted, in substance it presents an almost exact picture of the real political situation, except that the power of the Prussian King became greater than was at first intended.[2] The Liberals objected to it, and under the lead of Bennigsen the constituent Reichstag amended the draft of the constitution, by providing that the acts of the President[3] should be countersigned by the Chancellor, who thereby assumed responsibility for them — thus making the Chancellor a federal officer responsible to the nation.[4] The principle was excellent, but it remained unfruitful; for the Chancellor was not responsible criminally, and Bismarck refused to hold himself politically responsible to any one but the monarch. He always insisted that the motto "The King reigns but does not govern" had no application to the House of Hohenzollern. In short, the parliamentary system did not exist in the Empire, and the Chancellor was not forced to resign on a hostile vote in the Reichstag. If that body would not pass one of his measures he got on as well as he could without it; or, if he considered the matter of vital importance, he caused the Reichstag to be dissolved and took the chance of a new election.

[1] Lebon, p. 152.

[2] It is a striking fact that the high imperial officials have usually been selected from among the Prussian functionaries. Lebon, p. 157.

[3] This was in 1867, before the King of Prussia was given the title of Kaiser.

[4] Const. Art. 17. Unlike matters of military administration, the acts of the Kaiser as commander-in-chief of the army are not treated as requiring a countersignature. Schulze, *Lehrbuch*, p. 93.

Parties in the Empire

The bitter conflict between the King of Prussia and the House of Representatives, which reached its height shortly after Bismarck became chief of the cabinet in September, 1862, and lasted for the next four years, consolidated the different political elements in the Chamber into two hostile bodies — the supporters and the opponents of the government. The former, who shrunk at times to a mere handful of members, were called the Conservatives, while their antagonists belonged for the most part to a new organization known as the *Fortschritt* or party of progress. The decisive victory over the Austrians at Sadowa wrought a sudden change in public opinion. Instead of the tyrannical despiser of popular rights, Bismarck appeared in the light of the champion of German unity and even of liberty, and the result was a breaking up of the old party relations and a rearrangement of the political groups on a new basis.[1] The Conservatives, who had supported the government, ceased to be unpopular, and regained the seats they had lost; but, what is more important, each of the great parties split in two. A number of the Conservatives, who were more progressive in opinion than their fellows, and more in favor of the new federal system, left the party to organize another under the name of Free Conservatives;[2] and, on the other hand, a body of men, including the most influential leaders, separated themselves from the Fortschritt, and formed the National Liberal party. These men were less dogmatic than their former associates, were more inclined to sacrifice the ideal for the practical, and, above all, had more confidence in Bismarck.

[1] See the articles on the parties in the Reichstag in *Unsere Zeit*, by Oppenheim (1880, i) and Johannes Berg (1882, i, ii; 1883, ii).

[2] Called later the *Deutsch-Reichspartei*.

Thus two new middle parties arose, the four groups corresponding fairly well to the four divisions into which, according to the theory of Röhmer,[1] all mankind is naturally divided — the Reactionaries, the Conservatives, the Liberals, and the Radicals. There developed also various kinds of particularists so-called, based mainly on questions of race. They were irreconcilables, who complained that their province or their race had been unjustly treated, and had been forced into a union repugnant to its feelings. The most important of them were the Poles, the Hanoverian Guelphs, the Danes, and the Alsatians, all few in numbers, but uncompromising fighters. On the question of religion was founded the Catholic party or Centre, which arose when Bismarck entered upon his quarrel with the Catholic Church, but which has continued with undiminished strength ever since, although the original cause of its formation disappeared long ago. At the opposite end of the social scale from that of the conservative landowners there was later formed among the workingmen the party of the Social Democrats. Recruited primarily from the discontented classes in the large cities, it spread so widely over the country that it became a formidable national party.

The Growth of Discontent

Two opposite forces were growing in Germany before the war: one was the belief in military monarchy, which had received no little support among scholars; the other was a spirit of discontent, which had made great headway among the lower classes; and between the two the liberal elements had been pushed into the background.[2] In fact, both of

[1] *Lehre von den Politischen Parteien.* Cf. Bluntschli, *Charakter u. Geist der Pol. Parteien.*

[2] Cf. Bamberger, "The German Crisis and the Emperor," *New Review*, April, 1892.

these opposing forces derived much of their strength from a common source. The change from a theoretical to a practical point of view, that has lent potency to the doctrine of military monarchy, applies not only to politics, but also to private life, and here it replaced the enthusiasm for ideal and intellectual aims by a craving for material prosperity and well-being.[1] The result was an immense increase in the power of the Social Democrats. It would be a great mistake, however, to suppose that all men who voted for the Socialist candidates agreed with their doctrines. Probably a small part of them did so;[2] but the autocratic policy of the government, the burden of service in the army, and the difficulty of earning a comfortable living, made a great many people discontented, and these voted the Socialist ticket as the most effective method of protest. The size of the Socialist vote was, therefore, a measure of the amount of discontent in Germany, and as such it was highly significant. In fact, it has been said that the increase of the Social Democrats was one of the causes that inclined the government to divert attention from domestic questions by a foreign war.

[1] Viscount Bryce comments on this in "An Age of Discontent," *Contemp. Rev.*, Jan., 1891.

[2] Cf. Bamberger, *supra;* and this has been increasingly true since he wrote.

CHAPTER X

THE NEW GERMAN CONSTITUTION

The Revolution of 1919

ALTHOUGH the Social Democrats in Germany had been opposed to the military policy of the government and hostile to the idea of war, yet, when the war came in 1914, almost all their members in the Reichstag supported the government, voting the credits it demanded. But the suffering caused by the war and the blockade, supplemented by the propaganda of the Allies on the prospects of success, fostered discontent with political conditions and a desire for a larger popular control. Alarmed by the muttering, the Kaiser as early as 1917 intimated that reforms would be made, which were, however, delayed, partly by the objections of the Chancellor, von Hertling, who did not resign until the autumn of 1918. His successor, Prince Maximilian, coming into office as the end of the war was in sight, favored a parliamentary system; and two constitutional laws were enacted, taking from the Kaiser his powers in regard to war and treaties, and making the Chancellor responsible to the Reichstag.[1]

As in the case of France in 1870, military defeat brought discontent to the point of revolution, which in Germany was the work of the Socialist parties. Socialists everywhere are divided into two main groups: the reformers, who believe that the ends of socialism should be gradually attained through parliamentary means, and the revolutionaries,

[1] *Reichs-Gesetzblatt*, 1918, pp. 1273, 1274.

who believe that the political state should be abolished in favor of a dictatorship of the proletariat and a government by a system of workers' councils such as those set up in Soviet Russia. In Germany, the majority Socialist party, or the Social Democrats, was of the reforming type; while the Independents, and the Communists who were later called Spartacans, were distinctly revolutionary. It is a significant fact that, while the Revolution was the work of the extreme radicals, that is, the Independent Socialists, the constructive work of establishing a new government fell to the lot of the moderate Social Democrats.[1]

Under the direction of the Revolutionary Committee of the Independents and Spartacans a great strike took place in Kiel on November 4, which was followed by a demand of popular meetings through the country for the Kaiser's abdication. The streets of Berlin were placarded with the following appeal:

WORKERS, SOLDIERS, COMRADES!

The decisive hour has struck. We must rise to the level of a great opportunity. This is the beginning of a military dictatorship. We demand, not the abdication of a person, but the Republic: *The Socialist Republic*, and all that it implies.

Fight for PEACE, FREEDOM, *and* BREAD

Leave the Factories.
Leave the Barracks.

UP WITH THE REPUBLIC![2]

So fierce did this outburst become that on November 8, 1918, the Kaiser abdicated, fleeing to Holland. His example was shortly followed by the sovereigns in the other

[1] René Brunet, *The New German Constitution*, p. 17.
[2] Heinrich Ströbel, *The German Revolution and After*, p. 61.

German states, where power passed into Socialist hands. Before leaving office, Prince Maximilian attempted to maintain the continuity of the government by appointing as Chancellor, Fritz Ebert, the son of a saddle-maker who had risen to the head of the Social Democratic party. Meanwhile the Independents and Spartacans had organized Workers' and Soldiers' Councils throughout the country, which desired, indeed, to overthrow the political framework of the Empire, but were chiefly interested in bringing about a social revolution and the establishment of a "Class-State." They were not, however, strong enough to do so. In Berlin they were obliged to effect a compromise with the Majority Socialists by establishing a Cabinet, called the People's Commissaires, containing three members of each party; and this for a time ruled the city. Its actions were eagerly watched by a body entitled the Central Executive Committee of Workers' and Soldiers' Councils, also composed of representatives of both parties, and claiming to be the sovereign authority in the republic. So divergent were the methods of the Majority Socialists and the Independents, that permanent coöperation proved impossible. After a hard struggle, the more moderate element drove the Independents from power, thus winning the first victory for a parliamentary system. In November, the Ebert government issued a decree providing for the election of a national assembly to draw up a new constitution,[1] and as a result of the election held in January, 1919, 421 deputies, representing seven parties, were elected. The two Socialist parties together lacked 24 votes of a majority and hence could do nothing without the support of some other group. The largest single party was that of the Social Democrats, with 165 members, which thus held the balance of power,

[1] *Reichs-Gesetzblatt*, 1918, p. 1345.

while at the extremes were, on one side, the conservatives, or reactionaries, who took the names of German Nationalists and German Peoples' Party, numbering together 64 members, and on the other, the Independent Socialists, with 22 members.[1] The chief difficulty before the Assembly was to work out a compromise among its various elements.

The Weimar Assembly

The first task of the Assembly, which met at Weimar, was to establish a provisional government which could prevent turbulent riots in Berlin. The law of February 10, 1919, authorized the Assembly to appoint a provisional president, who should serve until his successor could be chosen at a general election. Herr Ebert was chosen for this position, and he was assisted by a ministry responsible to the Assembly. A Committee of States was also established, named by the different state governments, to act as a Second Chamber. Finally, the Assembly assumed authority to enact urgent national laws, until the definitive government should be established.[2]

In its deliberations, the Assembly had the advantage of a draft, carefully prepared by Professor Hugo Preuss, a student of political science and a member of the provisional ministry. A believer in a unitary as opposed to a federal state, Dr. Preuss would have dismembered Prussia, created sixteen "territories of state," and established at the same time a ministry responsible to parliament, elected by proporportional representation. The Preuss draft was worked over by the Committee of States; and while many federal

[1] Malbone W. Graham, *New Governments of Central Europe*, p. 26; for a biographical sketch of each member, cf. *Handbuch der Verfassunggebenden Deutschen Nationalversammlung:* Weimar.

[2] Law of February 10, 1919, *Reichs-Gesetzblatt*, 1919, p. 169.

traditions were retained and many tendencies of social democracy were added, the final Constitution was based in the main on his draft. In fact three main problems confronted the Weimar Assembly. First, the problem whether the German states should retain their old powers or be reduced to mere administrative units in a unitary state — the problem of federalism. Second, the kind of relationship to be established between the executive and legislative branches of the central government, which raised the question of checks and balances as well as of parliamentary supremacy. Third, the extent to which the constitution should carry out the social ideals proclaimed by the Revolution — the problem of the Socialization of Wealth.

The Problem of Federalism

While, with the exception of the Independents, all the parties in the Assembly believed that the federal principle should be maintained,[1] the final Constitution greatly alters the relations of the states to the federal government as they existed before the Revolution of 1919. This change is implied by the fact that the German Constitution no longer speaks of states, but only of "Länder," or territories,[2] while a Reichsrat has taken the place of the old Bundesrat or assembly of states. Moreover, the powers which may be exercised exclusively by the central government have been greatly increased;[3] although the states may still make

[1] Edmond Vermeil, *La Constitution de Weimar*, p. 91; a book which summarizes the debates of the Assembly. Cf. also Heilfron, *Die Deutsche Nationalversammlung im Jahre 1919*, 9 vols.

[2] "Das Reichsgebiet besteht aus den Gebieten der deutschen Länder." Constitution of August 11, 1919, *Reichs-Gesetzblatt*, 1919, p. 1383. The translation here followed is that of McBain and Rogers, *New Constitutions of Europe*.

[3] Otto Meissner, *Das neue Staatsrecht des Reichs und seiner Länder*, p. 26.

treaties with foreign governments on matters falling within their legislative competence, subject to approval by the Reich. Agreements altering national boundaries are to be made by the Reich with the consent of the state affected.[1] The Reich has also concurrent authority over many subjects, such as public health and the socialization of natural resources and economic enterprises. Finally, the Reich may issue uniform regulations and prescribe principles in regard to social welfare, religious associations, education, land titles, double taxation, etc.[2] For the subjects in which the Reich has concurrent authority the states may legislate until the Reich acts; but the national government may veto state laws relating to the socialization of wealth in so far as they affect the country as a whole.[3] National laws are declared supreme over state laws,[4] which means that the latter must give way to constitutional amendments and to acts of the Reichstag or administrative measures carrying national laws into effect.[5] All conflicts of authority are to be decided by the courts.[6] The Reich may also enact laws about taxes and revenues needed to enable it to carry out its own powers.[7] If, however, the Reich takes over revenues which formerly belonged to the states, due consideration must be given to the protection of their financial needs.

While the old Imperial principle of having national laws enforced by the states is maintained, nevertheless the

[1] Const. Art. 78. [2] Arts. 6–11. [3] Art. 12.

[4] "Reichsrecht bricht Landrecht." Art. 13.

[5] F. Giese, *Die Verfassung des Deutschen Reiches vom 11. August, 1919*, 2d ed., p. 97.

[6] Const. Art. 19. The principle of decentralization is recognized in that officials charged with the direct administration of national affairs in any state shall, as a rule, be citizens of that state. Art. 16.

[7] Const. Art. 8. Anschuetz, *Die Verfassung des Deutschen Reiches vom. 11. August, 1919*, p. 40. Moreover, consumption and customs taxes are administered by the national authorities. Art. 83; cf. also Art. 84.

National Government may lay down general directions for the states to follow, and it may send commissioners into these states to supervise the execution of national laws.[1] Disputes between the states and the federal government over administration are also to be settled by the courts; but if a state fails to carry out the duties imposed upon it by the constitution or the national laws the President of the Reich may compel performance by armed force.[2]

The Position of Prussia

In an effort to cut down the predominance of Prussia in the life of Germany, some members of the Constitutional Assembly, including Dr. Preuss, wished to dismember it, for it had been severely criticized on account of the war. It was pointed out that Prussia rested only on a dynastic foundation which had now been destroyed;[3] but the Prussian Junkers on one side, and on the other the socialists who saw in Prussia[4] — as an industrial state — the basis for their aspirations, were strong enough to defeat the immediate adoption of the proposal. The framers of the Constitution did provide, however, for the alteration of state boundaries and the creation of new states by constitutional amendment, or, if the states directly affected give their consent, by an ordinary law of the Reichstag. An ordinary law will also suffice when one of the states concerned does not consent, if the alteration of a boundary or the creation of a new state is demanded by the wishes of the population, and an overwhelming national interest requires it; the wishes of the population to be determined by a referendum

[1] Const. Art. 15.
[2] Const. Art. 48.
[3] Vermeil, *op. cit.*, ch. 2.
[4] M. Philips Price, *Germany in Transition*, p. 54.

held in the territory to be separated, at the request of one third of the voters. Under this provision, therefore, a district of Prussia may petition to be separated from the state; and if three fifths of its inhabitants vote in favor of separation, the Reichstag may enact a law for that purpose — without the consent of Prussia.[1] Since Prussia elects a majority of the members in the Reichstag, it will be impossible for the deputies of the other states to bring about her dismemberment, unless some of her representatives concur. By virtue of these provisions in the Constitution, the new state of Thuringia, formed of several small states, was created in 1920;[2] and thus, while the old Empire contained twenty-five states, the present republic contains only eighteen.

Furthermore, the powers of Prussia in the federal government are considerably diminished. The King of Prussia who was also the Emperor of Germany is no more. Prussia's influence in the Upper Chamber is, indeed, nominally stronger than in the old Bundesrat. According to the Constitution of 1919, each state has at least one vote in this body, while larger states have one vote for each million of population.[3] No state, however, may have more than two fifths of the members of the Reichsrat, which at present is composed as follows:

Prussia	26
Bavaria	10
Saxony	7
Wurtemberg	4
	47

[1] Const. Arts. 18, 166.

[2] *Reichs-Gesetzblatt*, 1920, p. 841. Cf. Law of March 24, 1921, *ibid.*, 1921, p. 440.

[3] Const. Art. 61.

	47
Baden	3
Thuringia	2
Hesse	2
Hamburg	2
Mecklenburg-Schwerin	1
Anhalt	1
Oldenburg	1
Brunswick	1
Bremen	1
Lippe-Detmold	1
Lubeck	1
Mecklenburg-Strelitz	1
Waldeck	1
Schaumburg-Lippe	1
	—
	66

The rule that no state shall have more than two fifths of the seats works against Prussia, which has about three fifths of the population of Germany. She has in fact about forty per cent of the members of the Reichsrat and had less than twenty-eight per cent of the former Bundesrat. While her seats in the upper house have been increased her special privileges there, such as the absolute veto on army changes and the chairmanship of the committees, have been withdrawn; and, in view of the new procedure for amendments, Prussia can no longer block constitutional changes, so that, although her representation in the body is larger, her actual power is less. Moreover, one half of the representatives of Prussia must be appointed from among the Prussian provincial administrative authorities — another provision operating to diminish the influence of her government.

The Reichsrat

While the principle of federalism is still recognized in the Reichsrat, the powers of this body are distinctly subordinate to those of the Reichstag. It still retains its diplomatic character in so far as the states are represented by members appointed by their ministries;[1] yet commentators are careful to point out that it is now an organ of the Reich.[2] The consent of the Reichsrat is declared to be necessary for the initiation of legislation by the national ministry, but if the two disagree, the ministry may introduce the bill, submitting with it the dissenting opinion of the Upper Chamber. The ministry must also introduce into the Reichstag any bill which the Reichsrat has initiated; but again, if the ministry disapproves of the bill, it may submit its objections. The Reichsrat has also a suspensive veto over bills passed by the Reichstag — suspensive only, for if no agreement between the two chambers is reached, the president within three months may submit the matter to a referendum; and if the Reichstag passes the bill again by a two-thirds majority, the president may either proclaim it as law or order a referendum. In either case, the decision is taken out of the hands of the Reichsrat. Instead of being the highest organ of the State, as was the old Bundesrat, it now occupies a position similar, so far as legislative power goes, to the House of Lords. Although the power of the Upper Chamber to issue ordinances has been abolished, the consent of the Reichsrat is still necessary before the national ministry can issue administrative regulations to carry na-

[1] Const. Art. 63.

[2] "Eine Vertretung der Länder beim Reich zu Reichszwecken und nicht etwa eine Organisation der Länder zu Länderzwecken," Dr. Quarck, quoted by Anschuetz, *op. cit.*, p. 119.

tional laws into effect. It is required also for the creation of advisory councils in regard to posts, telegraphs, telephones, and waterways, and for regulations concerning the construction and operation of the railways.[1] By virtue of special laws, it appoints twenty-four types of officials, such as judicial assessors and members of the national insurance office.[2] Apparently it has general supervision over the administration, since it must be kept informed by the national departments about the conduct of national business; and it must be consulted upon important administrative matters.[3]

Amendment of the Constitution

In federal governments, it is customary to give the states some control over amendments to the constitution. In the United States the consent of three fourths of the state legislatures, and in Switzerland and Australia the consent of a majority of the cantons and states, is necessary. In Germany, however, the states had nothing to say in regard to the adoption of the Constitution of 1919. According to Article 181, "The German people has, through its Constituent Assembly, determined upon and decreed this Constitution. It shall go into effect on the day of its publication." Moreover, constitutional amendments may be adopted by the national parliament, without reference to the states, as was also true under the Empire. Such amendments now require a two-thirds majority of both houses; but whereas, under the old constitution, fourteen votes of the Bundesrat defeated an amendment, the veto of the present Reichsrat is, as in the case of ordinary laws, merely suspensive. It

[1] Const. Arts. 77, 88, 91, 98.

[2] For the list, cf. *Handbuch für das Deutsche Reich*, 1924, Ministry of the Interior, p. 27.

[3] Const. Art. 67.

may, however, demand within two weeks a referendum on an amendment which the Reichstag adopts over its head. In such a case a majority of the popular vote cast is enough for ratification,[1] there being no provision for referendum to the states as such, or their citizens, but only to the people at large.

Thus, through the increased powers of legislation, administration, and taxation granted to the Reich, through its power in certain cases to divide states against their consent, through the diminished influence of Prussia and the subordinate position of the Reichsrat, the central authority in Germany has been much increased by the new Constitution at the expense of the states; so much, indeed, that many jurists now argue that Germany has ceased to be a federal and has become a unitary state.[2]

The Dispute with Bavaria

That this question is of more than academic importance was shown by the recent dispute between Bavaria and the central government over the so-called anti-Putsch law. Following the political murders of such important leaders as Herr Erzberger and Dr. Rathenau, the government secured the enactment of a law which punished with death or life-imprisonment any person belonging to a society whose aim was the murder of members of the republican government.[3] The act provided for the creation of a special

[1] The Constitution merely provides that where an amendment is submitted to a referendum, it must be approved by a majority of the qualified voters. Art. 76.

[2] One commentator says that Germany is "A state more composite than federal. It is neither a unitary nor a federal State. It is a State in full evolution and movement, a State which is moving from a former federal form to a form at the same time unitary and decentralized." Vermeil, *op. cit.*, p. 120.

[3] *Reichs-Gesetzblatt*, 1922, I, p. 585.

Court for the Protection of the Republic, composed of nine members named by the President, three of whom should be members of the Reichsgericht. A later act gave him additional pardoning power in the case of political offenders. The constitutionality of this anti-Putsch law was attacked by Bavaria, on the ground that the Court for the Protection of the Republic conflicted with the police power of the states, and that the extension of the President's pardoning power also infringed state sovereignty.[1] To resist such encroachments the Bavarian government enacted a counter-measure. Although the Constitution provided that disputes between the federal government and the states should be submitted to the National Judicial Court, the position of the federal government was too weak, in its own opinion, to permit of such solution. Instead, it issued a declaration, stating that "the political development of recent years, and especially the promulgation of the Law for the Protection of the Republic, have given cause in several States for apprehension that the National Government is following a plan of gradually limiting their competence, in order finally to divest them of their character and to mold the Reich more and more into a unitary state. This conception of affairs lacks foundation."[2] In fact, the central government made an agreement with Bavaria by which the latter agreed to withdraw its counter-measure while the national government agreed to protect the sovereign rights of the states in the enforcement of the anti-Putsch law. Although not juridically decided, this controversy seems to show that the German government is in fact still federal in nature.[3]

[1] Johannes Mattern, *Bavaria and the Reich*, 1923, p. 55.

[2] Mattern, *op. cit.*, Appendix V, p. 123.

[3] Despite the large powers granted to the central government on paper, the states, particularly those harboring Monarchists, were able during the

A Parliamentary Republic

Having dispatched the question of federalism, the Constituent Assembly next turned to the structure of the central government. That the monarchy was a thing of the past was indicated by the first article of the Constitution, which declared that "The German Reich is a Republic." Inasmuch as the word Reich had been interpreted in foreign countries to mean "Empire," some members wished to abandon it. But the arguments of Dr. Preuss finally prevailed — that the word Reich really meant territory, and that the historical development of Germany toward unity had been intimately associated with the word, which was, indeed, entirely compatible with republican institutions.[1] Symbolizing the change from the monarchy to the republic, the Constitution adopted the black, red, and gold flag of 1848 in place of the black, white, and red of the Empire.

Not only does the Constitution provide that the central government shall be a republic, but also that each state must have a republican constitution[2] with a legislative body which must be elected by universal suffrage of both sexes and proportional representation, and to which the ministry must be responsible. Many of the states have, in fact, gone so far as to abolish altogether the titular position of head of the state, placing the complete executive power in a ministry responsible to parliament. Moreover, with the exception of Prussia, all of them now have single-chamber legislatures.[3]

first years of the republic to make trouble for the central government in the enforcement of many laws, such as those relating to disarmament. Cf. André Honnorat, *Le Désarmement de l'Allemagne*, p. 99.

[1] Vermeil, *op. cit.*, p. 65. [2] Const. Art. 17.

[3] Cf. Koellruetter, "Die neuen deutschen Landesverfassungen," in *Deutsche Juristen Zeitung*, J. 26, p. 511.

The German President

Some members of the Constituent Assembly, fearing a monarchical restoration, opposed the creation of a president for the Reich, and argued that a chancellor and cabinet responsible to parliament were sufficient.[1] On the other hand, members of the Right, who did not dare openly to demand the restoration of the Hohenzollerns, advocated a strong president independent of the legislature, who might some day execute a *coup d'état*. A compromise was finally reached between these two extremes, which attempts to establish a president midway between the French and the American conceptions.[2]

In France, the president is elected by parliament sitting as the National Assembly; and this, coupled with the fact that all his acts must be countersigned by a minister responsible to the Chamber, has made him nearly a figurehead. In the United States, the president is elected technically through the electoral college, but really by the people. Since he is not responsible to Congress and his cabinet is responsible only to him, he has become the dominating figure in American political life. The German Constitution follows the American system in so far as it provides for popular election. The President is chosen "by the whole German people" for seven years and may be reëlected.[3] On May 4, 1920, a law was passed requiring for his election on the first ballot an absolute majority of the votes cast; and, if no such majority is obtained, a second election at which a plurality is enough.[4] The German Constitution does not provide for a vice-president, declaring that in case of vacancy or disability before the end of the term, the Chancellor

[1] Vermeil, *op. cit.*, p. 129.
[2] Anschuetz, *op. cit.*, p. 97.
[3] Const. Art 43.
[4] *Reichs-Gesetzblatt*, 1920, p. 849.

shall perform the duties of the office; but it permits a different disposition to be made by statute if the remnant of the term is long.[1] This provision of the Constitution was used by the German Parliament when President Ebert died, Dr. Walter Simons, the head of the Supreme Court, being made President *ad interim*. In March, 1925, the first presidential election was held, in which seven parties nominated candidates.[2] The candidate of the Right, Dr. Jarres, received about 11,000,000 of the 27,300,000 votes cast, and as this was not a majority, a second election was held in April, at which General von Hindenburg, a new candidate of the Right, was chosen.

On paper, the powers of the President are considerable. He is commander-in-chief of the army and navy, and he represents the Reich in foreign affairs.[3] But in these matters greater formal restrictions are laid upon him by the Constitution than in any other important country in Europe. In England a declaration of war may legally be made by the Crown; in Germany only by the legislature. In England and France treaties of alliance may be made without the consent of parliament; in Germany alliances and treaties relating to subjects of national legislation require its consent.[4] The President appoints and removes officials, except as otherwise provided by law; but not only the judges of the ordinary courts, but also many administrative officials are appointed for life and can be removed only for

[1] Const. Art. 51.

[2] In this election 70 per cent of the voters took part — a lower percentage than in the previous elections to the Reichstag. Only about 52 per cent of the voters took part in the presidential election in the United States in 1924. For a discussion of this problem, cf. Schlesinger and Ericksson, "The Vanishing Voter," *New Republic*, October 15, 1924.

Between 1919 and 1925 Herr Ebert remained President; he was originally chosen by the Constituent Assembly.

[3] Const. Arts. 45, 47.

[4] Const. Art. 45.

cause and subject to the provisions of law.[1] The framers of the German Constitution evidently intended to maintain the expert German bureaucracy and to prevent the President from developing a spoils system. Article 130 therefor declares, "Officials are servants of the whole community and not of a party."

When public safety is disturbed, the President may take steps to restore order — if necessary by armed force. For this purpose he may temporarily suspend the constitutional guaranties of personal liberty, freedom from search, the inviolability of communications, freedom of speech, assembly and association.[2] But these measures must be communicated to the Reichstag, which may demand their abrogation. The President has also the power of pardon, while for a general amnesty a national law is required. Of more unique interest are his powers in connection with legislation. The President alone has power to order a referendum on laws relating to the budget, taxes, and salaries;[3] and he may break a deadlock between the Reichsrat and the Reichstag over a bill, either by submitting it to referendum or by promulgating it in the form adopted by the Reichstag. One would suppose that he would be vested with general executive authority. But this is not the case,[4] for it is provided that "the Chancellor shall lay down the general course of policy and shall be responsible

[1] Const. Arts. 46, 104. "Pensions and provision for surviving dependents shall be regulated by law. Duly acquired rights of officials shall be inviolable. . . . Officials may be temporarily removed from office, provisionally or permanently retired, or transferred to another position at a small salary, only for reasons and according to forms provided by law." Art. 129; Anschuetz, p. 209.

[2] Const. Arts. 48, 114, 115, 117, 118, 123, 124, 153. For his power to coerce the states, cf. *supra*. During the first years of the republic, his power was very liberally construed.

[3] Const. Art. 73. [4] Anschuetz, p. 98.

therefor to the Reichstag";[1] and he in turn is limited by a provision that "the National Ministry shall reach its decisions by majority vote."[2]

Thus the German Constitution follows the French in hedging the President about with legal and political checks that prevent the exertion of personal power. Some of these checks are unique in character. The German President may be removed from office by a popular vote demanded in a resolution passed by the Reichstag by a two-thirds majority without specific charges[3] — a process which resembles the recall used in different parts of the United States. As soon as the Reichstag passes such a resolution, the President is suspended, and his duties are, presumably, exercised by the Chancellor. If the popular vote fails to remove him the result is regarded as a new election, and he serves for a further term of seven years, the Reichstag being at once dissolved. The Reichstag may also by a two-thirds vote impeach the President or any of the ministers "for a wrongful violation of the Constitution or a law"; and in that case, the trial takes place in the Staatsgerichtshof.[4]

Of more importance is the provision that all orders and decrees of the President must be countersigned by some minister, and that "Responsibility is accepted by the counter-signature."[5] While the President appoints the Chancellor and the other national ministers upon his recommendation, they must have the confidence of the Reichstag, and must resign if the Reichstag, by express resolution, withdraws its confidence. Although the Chancellor lays down the general course of policy, each minister conducts the branch of administration entrusted to him, and

[1] Const. Art. 56. [2] Art. 58. [3] Art. 43.
[4] Art. 59. [5] Art. 50.

is personally responsible therefor to the Reichstag. Thus it is possible for the Reichstag to vote want of confidence in a single minister, and no doubt in the cabinet as a whole.[1]

Since his acts must be countersigned by a minister, the German President may well have no more real power than the French President. The right to order referenda was seemingly devised to place some independent check upon the Reichstag. But if the President cannot order a referendum without the consent of a minister responsible to the Reichstag, this check may become meaningless, because the ministry will naturally support the latter body. Despite the powers granted to the German President, it remains to be seen whether he will be able to occupy a position intermediate between those of the chief magistrates in America and France, or whether he will be forced to conform to the French type.

The Reichstag

The legislative power of the Republic is vested in the Reichstag, subject, as we have seen, to the suspensive veto of the Reichsrat. This body has a democratic basis, for its representatives are elected by "universal, equal, direct and secret suffrage of all men and women over twenty years of age, according to the principles of proportional representation." Elections must take place on a Sunday or a public holiday.[2] The election law of April 27, 1920, carrying these principles into effect, does not fix the number of members in the Reichstag;[3] but adopting a system worked out in Baden, it determines the number automatically — namely,

[1] There are thirteen members in the German Ministry: the Chancellor, the Vice-Chancellor, the Ministers of Justice, Foreign Affairs, Home Affairs, Finance, Defence, Economics, Labor, Food and Agriculture, Posts, Transport and Occupied Territories. *Handbuch*, p. 57. [2] Const. Art. 22.

[3] *Reichs-Gesetzblatt*, 1920, 627; cf. also the Election ordinance of May 1, 1920, *ibid.*, p. 713.

by providing that each party or group of voters shall elect one member for each 60,000 votes which it polls in a district.[1] By this means the principle of proportional representation is carried into effect, while the number of members of the Reichstag depends upon the total vote cast. Thus in 1923–24 the Reichstag was composed of 466 members, but at the elections in December, 1924, the number increased to 493. At present (1925) the Social Democrats are the largest group, having 131 members, while the German National Party, a conservative group, is second with 111 members. Altogether eight parties are represented there.

The Reichstag is elected for four years. Its regular annual session is held on the first Wednesday of November. It may be convened, however, in special session, at the request either of the President of the Reich or of one third of the members. The President may also dissolve it, but only once for the same cause, and an election must be held within sixty days. This power was exercised by the President on October 20, 1924, when it proved impossible for the Chancellor to form a coalition cabinet — the new election following on December 7.

The German Constitution has modified the rule observed in the United States that each house of Congress shall be the judge of the election of its own members. It directs the Reichstag to establish a tribunal for this purpose, composed partly of its own members, and partly of judges of the Supreme Administrative Court designated by its president. This tribunal gives hearings and passes judgment, the presence of three members of the Reichstag and two of the judges being necessary for a quorum.[2]

[1] For an analysis of this system as it worked in the first election, cf. *Representation*, August, 1920, No. 37.

[2] Const. Art. 31. Cf. the Law of October 8, 1920, *Reichs-Gesetzblatt*, 1920, p. 1773. For the members, cf. *Handbuch*, p. 25.

The usual safeguards for the protection of members of parliament are embodied in the German Constitution. No member of the Reichstag or of a Landtag (the legislative body of a state) can be held responsible outside of parliament for anything he says there. Nor can he, without the consent of the house of which he is a member, be subject during the session to examination or arrest for a penal offence, unless caught in the act. Such consent is also required for every other restriction of his personal liberty. Upon the demand of the Reichstag, any criminal proceeding against a member must be deferred until the end of the session. Moreover, no search or seizure can take place within the house except with the consent of the President.[1]

Organization and Procedure of the Reichstag

The members of the Reichstag associate themselves in "Fractions," resembling the groups in the French Chamber of Deputies. Fifteen members are necessary to form a "Fraction," which may also contain less definitely attached "guests."[2] Furthermore, an Elders' Council (*Ältestenrat*), composed of the president, a vice-president and twenty-one members selected by the Fractions in proportion to their size, assists the president in conducting the work of the session. It brings about an agreement between the Fractions on the order of business, and appoints the chairmen of the committees.[3] Finally, a *Vorstand*, corresponding to the French Bureau and composed of the president, vice-president, and four secretaries (*Schriftführer*) is the administrative organ of the Reichstag. The president, it may be added, has a consultative voice on all the committees.[4]

[1] Const. Arts. 36–38.

[2] *Geschäftsordnung für den Reichstag*, Arts. 7–9, Amtliche Ausgabe, von 31 Dezember, 1922, Berlin; in force as of January 1, 1923.

[3] *Ibid.*, Arts. 10–12. [4] *Ibid.*, Arts. 13–23.

There are fifteen standing committees in the Reichstag, as follows: Protection of the Rights of the Representative Body; Foreign Affairs; Order of Business; Petitions; Budget; Taxation; Accounts; Political Economy; Social Affairs; Population Policy; Housing; Education; Administration of Justice; Functionaries; Communications. The Reichstag may establish special committees whenever it wishes. It also determines how large the committees shall be, the members being chosen by the Fractions in proportion to their size; and upon each of them every Fraction is represented by a leader (*Obman*). A deputy who is the author of a bill before a committee of which he is not a member is allowed to become a "consulting member" while the bill is being discussed. The meetings of committees are not public, — except in the case of committees of investigation, — but other members of the Reichstag may attend as listeners.[1]

Three of the committees provided for by the German Constitution are unusual in character: a committee of investigation, the standing committee on Foreign Affairs, the standing committee for the Protection of the Rights of the Representative Body. Upon the proposal of one fifth of its members, the Reichstag must set up a committee of investigation, which sits in public unless otherwise ordered by a two-thirds vote. Courts and administrative authorities are required to submit evidence requested by it, and therefore it is not only a very effective method of controlling the Government, but also a means by which a minority may exert some check on the majority.[2]

[1] *Geschäftsordnung*, Arts. 26–34.

[2] Anschuetz, p. 88. The jurisdiction of such committees does not extend beyond that of the Reichstag, nor can they impose punishments. Anschuetz, p. 89.

The Constitution provides that the Reichstag shall appoint a committee on Foreign Affairs, which has the privilege of sitting between sessions of the Reichstag and even after the end of the legislative term. Its sessions are secret, unless it decides otherwise by a two-thirds vote. The government consulted it in regard to the Dawes report and on other matters; but in the main, its services have not been important because of the impossibility of preventing confidential information from leaking out.[1] The Committee for the Protection of the Rights of the Representative Body may also meet between the sessions of the Reichstag. Its primary object seems to be to protect the republic against attempts (*Putschs*) to restore the Hohenzollerns and to overthrow the republic. The Committee for Foreign Affairs has twenty-eight members, while the Committee for the Protection of the Rights of the Representative Body has eighteen.[2] In the past, parliamentary control has not been complete, because parliament is not in session about half of the year, and during that time the ministry might do very much as it pleased. The creation of parliamentary committees which meet during parliamentary recesses is intended to fill this gap. If they disapprove the policy of the ministry, a special session of the Reichstag must be called at the demand of one third of its members.

Bills may be introduced into the Reichstag either by the ministry or by members,[3] and in the latter case, the proposal requires the signature of at least fifteen members.[4] Bills, resolutions, and treaties go through three readings, the first

[1] Dewitt C. Poole, *The Conduct of Foreign Relations*, p. 52; a communiqué of the meetings of this committee is published; cf. *Berliner Tageblatt*, August 20, 21, 23, 1924.

[2] *Handbuch*, p. 5.

[3] For the relation of the Reichsrat, cf. *supra*.

[4] Const. Art. 68; *Geschäftsordnung*, Art. 49.

of which begins three days after the distribution of the printed proposal. On the first reading, only the general principle of the bill is debated, and at its conclusion the bill may be referred to a committee. Two days after the committee reports, the second reading may take place, on which the debate is confined to details, unless the Reichstag decides otherwise. At this stage, amendments to a bill may be made, but no amendments may be moved to a treaty. If no changes are made in the bill during the second reading, the third reading may follow immediately; otherwise, it comes two days later, when a debate takes place upon both the general principle and the clauses. Amendments may still be adopted, and the third reading ends with the acceptance or rejection of the measure.[1]

The Referendum

In case of disagreement between the Reichstag and the Reichsrat, as we have seen, the President may refer the contested bill to a referendum. One third of the members of the Reichstag may also request that the publication of a national law shall be deferred for two months, except laws declared by both houses to be urgent.[2] A law thus deferred is subject to a referendum upon the request of one twentieth of the qualified voters, but it is not rejected unless a majority of the qualified voters participate in the election.[3] The Constitution also authorizes the use of the initiative when one tenth of the qualified voters petition for the submission of a proposed law. Such a petition must be based on a fully elaborated bill, which must be submitted to the

[1] *Geschäftsordnung*, Arts. 35–48. [2] Const. Arts. 72–73.

[3] In a house containing half a dozen parties, it may be very difficult to get a third of the members to agree on a referendum. Cf. Leo Wittmayer, *Die Weimarer Reichsverfassung*, p. 432.

Reichstag by the ministry, accompanied by an expression of its views. Of course, if the Reichstag accepts the bill without amendment, a popular vote does not take place.[1]

Interpellations

In exercising its control over the government, the Reichstag has adopted a procedure which in some points resembles the British, and in others the French, system. Resolutions of lack of confidence in a minister require the signature of at least fifteen members. The Rules of Procedure also provide for interpellations, "small questions" (*Anfragen*), petitions, and information about the execution of the Reichstag's resolutions.

Interpellations must be framed in concise language and signed by thirty members of the Reichstag. When thus submitted, the President of the Reichstag asks the government to declare whether and when it wishes to make a reply, and the interpellation is fixed for the day named by the government. After one of the interpellators has spoken and the government has replied, debate on the interpellation may take place if desired by fifty deputies; or, on the demand of thirty members present, the interpellation may be referred to a committee or set down on the calendar of the next day. Should the government refuse to reply to the interpellation within two weeks, the Reichstag may proceed to discuss it.[2] If interpellations become so numerous that they interfere with the discharge of business, the Reichstag may limit debate on them to certain days a week.

"Small questions" may also be asked of the government, in regard to definite facts, provided they are supported by fifteen members. If a written answer is not received from the government within fourteen days, the President of the

[1] Const. Art. 75.

[2] *Geschäftsordnung*, Arts. 55–59.

Reichstag may place the matter on the order of the day. The first hour of one day a week is given over to answers. The reply of the government cannot be debated.[1]

Petitions coming from outside individuals and organizations are referred by the president to the appropriate committee, usually the Committee on Petitions, and a member who presents such a petition is invited to attend its meeting. The committee must report, proposing, as a rule, either that the petition should be referred to the government, should be killed by passing to the order of the day, should be discharged because the matter is already being handled, or should be declared improper for the Reichstag to discuss. At the request of the committee, or of thirty members of the Reichstag, the report of the committee on these petitions must be debated. If thirty deputies raise the question, a petition considered "improper" by the committee must be reconsidered. In any case, the petitioner is informed of the action taken.[2]

Finally, the Reichstag may request written information of the government in regard to the execution of the Reichstag's resolutions. Within two weeks after this information is produced, deputies may make comments on it in writing, to which the government is given a further opportunity to reply. If the government has not replied within four weeks the matter can, at the request of thirty members, be put upon the order of the day and debated.[3]

Any member of the Reichstag may propose that a minister be summoned to appear before it, and if it so decides he speaks to the question addressed to him. On the demand of thirty members a debate and vote may then take place.[4]

[1] *Geschäftsordnung*, Arts. 60–62. [2] *Ibid.*, Arts. 63–65.

[3] *Ibid.*, Arts. 67–68. On procedure cf. Stier-Somlo, *Reichsstaatrecht.* 1924; F. Giese, *Die Reichsverfassung 6. auflage* 1925. [4] *Geschäftsordnung*, Arts. 95–97.

Guaranties to Individuals and Groups

While the German government has been given broad powers, the Constitution prescribes certain guaranties to individuals, associations, and minorities. All Germans are equal before the law. Men and women have in principle the same civil rights. All privileges based upon birth or rank are abolished. Titles of nobility may no longer be conferred. Every German has equal rights in every state with the citizens of that state. He may settle in any place in the Reich, acquire property and carry on business, subject to regulations prescribed by national law. Emigration, however, may be restricted by law. The principle of the protection of minorities is recognized by an article which provides that the parts of the population of the Reich speaking a foreign language shall not be interfered with by legislative or administrative action in their free racial development, especially in the use of their mother-tongue in education, in communal administration, and the administration of justice.[1] Liberty of the person is declared inviolable, and cannot be restrained by public officials save as provided by law. Ex-post-facto laws are forbidden.[2] Freedom of speech within the limits of the general laws is guaranteed. Thus some of these guaranties are mere declarations of principles which may be abridged by statute.

The family, as an institution, is specifically protected by a clause that "Marriage, as the foundation of family life and of the preservation and increase of the nation, stands under the special protection of the Constitution"; and the duty of the state is asserted, to maintain the purity, health and social welfare of the family.[3] Families with many children are declared entitled to public assistance. Ma-

[1] Const. Art. 113. [2] Const. Art. 116. [3] Const. Art. 119.

ternity and youth are placed under the protection of the State. The right of association is guaranteed for purposes not prohibited by the criminal code, a privilege, indeed, which may not be limited by preventive regulations.[1] Every German is entitled to address petitions or complaints to the public authorities, and this may be done by individuals and associations. Municipalities or groups of municipalities are declared to have a right to local autonomy within the limitations of the law. All inhabitants of the Reich enjoy complete liberty of belief and conscience. The state church is abolished, and every religious association is guaranteed freedom of meeting, with a right to direct and administer its affairs without interference, within the limitations of a general law. But religious associations which are public corporations are entitled to levy taxes on the basis of the civil tax lists.[2]

Finally, education, art, and science are placed under the protection and fostering care of the state. Compulsory education is universal; and the entire school system is placed under state supervision; instruction and school supplies being free in elementary and secondary schools. Within municipalities, elementary schools teaching certain religious subjects may be established at the request of persons desiring them, if it does not interfere with the general public-school system. The government is directed to provide from public funds for the continued education of children of poor parents, and it is stated that "In all schools, an effort shall be made to develop moral education, civic sentiments, and personal and vocational efficiency, in the spirit of the German national character and of international conciliation." [3]

[1] Const. Art. 124. [2] Arts. 135–144. [3] Art. 148.

The Judicial System

The framers of the Constitution also devised a number of provisions to prevent abuses in the administration of justice. All extraordinary courts are prohibited, while military jurisdiction is forbidden except in time of war. As we have seen, judges are appointed for life and can be removed only for reasons prescribed by law. The principle, found in many continental countries, of administrative law — a separate body of law and courts for officials — is also recognized.[1] Administrative courts, according to the Constitution, are intended to protect the individual against ordinances and decrees of the administrative authorities. Moreover, it is declared that if an official in the exercise of the public authority is guilty of a breach of official duty, the state or the public body in whose service the officer is employed, is responsible to the person injured thereby.

The Supreme Court for ordinary cases is still the Reichsgericht; but in 1921 a special tribunal, the Staatsgerichtshof, was also established to try impeachments against the President or the ministers, and questions arising under the Constitution. When performing the first of these functions the Court is composed of the President of the Reichsgericht as chairman, one member each from the Prussian, Bavarian, and Hanseatic supreme courts, a German solicitor (*Rechtsanwalt*), and ten assessors (*Beisitsern*) half of whom are elected by the Reichstag and half by the Reichsrat. When deciding constitutional questions, it is to be composed of the President of the Supreme Administrative Court, three members of that court, and three members of the Reichsgericht.[2]

[1] Const. Arts. 107, 108, 131.

[2] Law of June 9, 1921, *Reichs-Gesetzblatt*, 1921, p. 905. As yet the Supreme Administrative Court has not been established.

In so far as interstate disputes and conflicts between the federal government and states are concerned, the German Constitution recognizes the principle of judicial review. It provides that such controversies shall be decided by the Staatsgerichtshof "on the appeal of either of the contesting parties, if no other court of the Reich is competent." The President of the Reich must execute its decisions.[1] This court may also decide disputes between the national and state ministries in regard to the administration by the states of national laws.[2] There is, however, no provision in the Constitution for a judicial review of the acts of the Reichstag, except in case of conflict with the states.[3]

Socialization and Social Democracy

It is natural that a constituent assembly controlled by socialists should enact provisions for the socialization of many forms of enterprise. The principles guiding the Republic in this respect are defined in Article 151, which asserts that "The organization of economic life must conform to the principles of justice, to the end that all may be guaranteed a decent standard of living. Within these limits the economic liberty of the individual shall be assured." Freedom of contract and property are guaranteed, but certain enterprises, which are declared suitable for public management, the Reich may, without prejudicing the right of compensation, transfer to public ownership.[4] Moreover,

however, in the states. Cf. Anschuetz, p. 179. In trying constitutional questions relating to communications, the Staatsgerichtshof has still another composition.

[1] Const. Art. 19. [2] Art. 15.

[3] The law of June 9, 1921, is vague on this point. Cf. Dr. Wilke, "Die Staatsgerichtshöfe für das Deutsche Reich," in *Deutsche Juristen Zeitung*, J. 26, p. 587.

[4] Const. Art. 156.

the Constitution makes it the duty of the Reich to acquire all railroads serving as means of general communication — many of which had previously been operated by the states; and the same principle is applied to waterways.[1] The Reich was directed also to take over the postal and telegraph services of Bavaria and Wurtemberg by April 1, 1921.[2] Putting into practice the principles of guild socialism,[3] the Constitution also provides that the railway system shall be administered as an autonomous economic enterprise, hoping thereby to take it out of the hands of the politicans.[4] In the same spirit, the National Ministry is directed to establish advisory councils to coöperate in the management of railways and waterways.[5] Large landed interests are denied a right to withhold their property from public use, for the Constitution provides that the distribution and use of the land shall be controlled by the state, "in such a manner as to prevent abuse and to promote the object of assuring to every German a healthful habitation and to all German families, especially those with many children, homesteads for living and working suitable to their needs." Land needed for dwellings may be expropriated.[6]

The Reich is enjoined to establish health, maternity, old-age, and out-of-work insurance;[7] and, indeed, the principle of industrial democracy is theoretically recognized by a clause which says that "Workers and employees shall be called upon to coöperate in common with employers, and on an equal footing, in the regulation of salaries and working conditions, as well as in the entire field of economic development of the forces of production." To carry out this ob-

[1] Const. Arts. 95, 97, 101.
[2] Art. 170.
[3] Cf. G. D. H. Cole, *Guild Socialism Re-stated.*
[4] Const. Art. 92.
[5] Cf. Const. Arts. 88, 93.
[6] Const. Art. 155.
[7] Art. 161.

ject, workers and employers are to be organized in Factory Workers' Councils, District Workers' Councils, and in a Workers' Council for the Reich. The original intention was to give Labor an actual participation in the control of industry. But in the law of February 9, 1920, establishing an elaborate system of Factory Workers' Councils, these bodies are given only advisory power, save that the councils may name one or two members to boards of directors of industrial enterprises, and under some circumstances may also have access to the books.[1] It does not appear, therefore, that these councils have effected any radical changes in German industry.

The Workers' Councils are concerned primarily with the internal affairs of industry, but the Constitution also provides for the representation of economic interests, in an advisory capacity, in political matters as well. According to Article 165, the national ministry, before proposing to the Reichstag political-social bills of fundamental significance, must submit the drafts to the Economic Council of the Reich for consideration. This Council, which must be so constituted as to include representatives of all important economic groups according to their importance, may also initiate drafts of bills. If the national ministry fails to assent to the bill, it must nevertheless present the draft to the Reichstag accompanied by an expression of its views, and the Economic Council may designate one of its members to appear before the Reichstag in support of the measure.

These provisions are the result of a compromise of conflicting elements in the Weimar Assembly. The Spartacans and Independent Socialists wanted a Soviet form of government — a system of workers' councils in full charge of

[1] *Reichs-Gesetzblatt*, 1920, p. 147; cf. McBain and Rogers, *New Constitutions of Europe*, ch. 6.

national affairs. On the other hand, the Conservatives argued in favor of a parliament of frankly professional interests which, as they believed, would be controlled by the representatives of capital.[1] After considering these different theories, the majority of the Weimar Assembly decided that the parliament of Germany should be retained upon its present political basis, but that an economic council should be established, with advisory powers on economic legislation, and employed to discharge economic functions and coöperate "in the execution of the laws of socialization."

The workers' councils for separate factories were, as we have seen, duly created, but not so the larger councils of workmen for the districts and the nation provided in the Constitution. Inasmuch as the government was not prepared to establish these latter councils, it could not create a permanent Economic Council, to contain representatives of bodies not yet in existence. Consequently, it set up a Provisional Economic Council in May, 1920. The chief difficulty lay in determining the source and extent of representation, the Left seeking to base it upon numbers instead of groups — which would have meant a larger representation for employees than employers. There was also a struggle to secure representation for the consumers and the farmers. A compromise was finally reached by which a Council with 326 members was created, containing ten different groups represented as follows:[2]

68 representatives of agriculture and forestry; 68 representatives of industry; 44 representatives of commerce, banking, and insurance; 36

[1] Cf. the remarks of Dr. Delbrück, quoted by Herman Finer, *Representative Government and a Parliament of Industry. A Study of the German Federal Economic Council*, p. 94; cf. also Vermeil, *op. cit.*, pp. 174 ff.

[2] Decree of May 7, 1920, *Reichs-Gesetzblatt*, 1920, p. 858.

representatives of small business, small industries and handicrafts; 34 representatives of the transport and postal services; 6 representatives of gardening and fisheries; 30 representatives of consumers; 16 representatives of civil servants and the liberal professions; 12 nominees of the Reichsrat; 12 nominees of the Government.

While these groups are functional in character, the employers and the employees in the different groups are combined in classes, called Divisions I and II, while the others, such as the consumers, form Division III. The decree establishing the Council specifies how the representatives are to be chosen, most of them being named by organizations of employers, workmen or consumers. This method of selection has resulted in a very distinguished membership, including such men as Cuno, Stinnes, Rathenau, Legien, Umbreit, and Wissell.[1]

The government has already submitted a large number of drafts of bills for study by this Council before sending them to the Reichstag, such as laws on railway rates, the regulation of the potash industries, and reparation questions. The projects are referred to the appropriate committee of the Council, where speech has been businesslike rather than declamatory, but where class feeling has been marked. During the first two and a half years of the Council's existence, between fifteen hundred and two thousand committee meetings and fifty-two sessions of the full Assembly were held.[2] Moreover, the Economic Council has not hesitated to initiate measures for the Reichstag on accident insurance, pensions, income taxes, and unemployment.

What has been the attitude of the Reichstag toward these proposals? Mr. Finer, who has made the most thorough study of the Council, remarks that "Where the Govern-

[1] Finer, p. 122.

[2] *Ibid.*, pp. 156, 159.

ment has wholeheartedly adopted any suggestion of the Council, the Reichstag gives its consent because the Government can influence its constituent parties. Where it is convinced that the work of the Economic Council is of great and overwhelming importance, it adopts its advice entirely. Where, however, the Government has given way under the heavy fire of the personalities in the Council, it takes the opportunity either of not referring to the report of the Economic Council, or of putting extracts only of the report before the Reichstag or its Committees." [1]

So far the Council appears to have had more disputes with the government than with parliament, many of them in fact unimportant; and it has occasionally declared that certain measures, including the budget, were economic, which the government did not regard as such within the meaning of Article 165. A more important question arose over the Reparations negotiations of June, 1921, when Division I of the Council — the employers — met to express their attitude. This meeting aroused the criticism of the workers, who declared that both divisions should be asked to give advice. The Administrative Bureau of the Council finally ruled that, while the Council as such should act as a unit, either employers or employees might meet separately to formulate independent views.[2]

It is, of course, too early to express a definite opinion on the value of this new politico-economic experiment in Germany. But, to quote Mr. Finer again, "Few people in Germany deny the value of the actual Economic Council; still fewer deny the promise contained in the institution. As a council of experts providing the creative power which is essentially lacking in the Reichstag, debating economic detail — work for which the Reichstag is unfitted and with-

[1] Finer, p. 160.

[2] *Ibid.*, p. 151.

out the necessary time — as an instrument of expression of criticism, it has proved its worth and its right to exist." [1]

The disadvantages of a professional parliament are largely neutralized when it is made a mere advisory body like the German Economic Council, whose great merit lies in the fact that through this system of representation it is possible for the public to secure the services of skilled and distinguished men who could never be persuaded to run for parliament, and if they did, would probably not be elected.

Such are the leading features of the new German constitutional system: the conditions of the Empire have been destroyed by reducing the power of Prussia and of the Bundesrat, and by establishing parliamentary government upon a broad democratic basis. In achieving this result, the German Constitution has made some interesting experiments. The committees of investigation and the permanent committees which watch over the government during parliamentary recesses; the initiative and referendum; the recall of the President; the method of breaking deadlocks between the Reichsrat and the Reichstag, and those by which the latter body controls the ministry; the curious composition of the Staatsgerichtshof; the provisions in regard to family, schools, churches, and socialization; and the first important attempt to establish an advisory body of representatives of occupations — all these are of great interest. Perhaps it is an exaggeration to say with George Young that "This is the most democratic constitution possessed by any of the principal European peoples";[2] especially since the test of a constitution comes

[1] Finer, p. 181. Cf. G. Doublet de Persan, *Le Système des conseils economique en Allemagne;* Georg Bernhard, *Wirschaftsparlamente.*

[2] *The New Germany*, p. 242.

in its operation, which in the case of the German Republic cannot as yet be judged. Nevertheless, the German Constitution shows that its framers attempted to work into a single document a plan that profits from the experience of mankind. Certainly, the development of this Constitution is worth watching.

CHAPTER XI

SWITZERLAND

SWITZERLAND may be considered the ethnological as well as the geographical centre of Europe, the place where the Rhine, the Rhone, and the Po take their rise and the races meet together. Among these races the Germans preponderate heavily. According to the census of 1910, nearly seven tenths of the people speak German, one fifth speak French, one twelfth, Italian; while the remaining one per cent speak a peculiar dialect called "Romansch." But a difference in blood is not the only thing that separates the Swiss from each other. They are also sharply divided on religious questions. Except in the case of the Italians, who are almost entirely Catholic, the lines of religion and of race by no means coincide, and in fact it is often impossible to understand the religious condition of a canton without a careful study of its history.[1] The Protestants form to-day about fifty-seven per cent of the total population, and indeed the relative proportion of the churches varies very little from generation to generation.

Now, if any one were asked what kind of government a free people so divided by blood and creed would probably have, he would feel sure that it would not be a highly cen-

[1] The cantons of Lucerne, Uri, Schwyz, Unterwalden, Zug, Freiburg, Ticino, the Valais, Appenzell-Interior, and Soleure are Catholic, all but the last nearly solidly so. Zurich, Berne, Schaffhausen, Appenzell-Exterior, Vaud, and Neuchâtel are overwhelmingly, and Glarus, Basle, and Thurgau heavily, Protestant; while St. Gall, the Grisons, Aargau, and Geneva are not very far from evenly divided.

tralized one. He would doubtless expect it to be a federation of some sort; and such is, in fact, the case. The heart of the ancient Confederation consisted of the forest cantons at the head of the Lake of Lucerne. One by one, other members joined the League, some of them rural communities in the mountains, some of them cities in the lower country, and thus the Confederation gradually extended over the greater part of the present Swiss territory; but still no real federal union was formed, and Switzerland remained an alliance of separate states loosely bound together, until the end of the last century, when the French Revolution swept over Europe like a tornado, uprooting everything in its track. Then the French Directory conferred upon the unwilling Swiss centralized institutions, resembling the last new pattern of perfect government that had been devised in France. The majority of the people did not appreciate a blessing which was unsuited to their habits and traditions, and in 1893 Napoleon tried to reconcile the hostile factions by the Act of Mediation. By this change, three new cantons were added to the territory;[1] as many more were carved out of the old ones;[2] and a federal system was established, in which the power of the central government was far from strong.

The Confederation

After the fall of Napoleon, the Congress of Vienna gave to the country its present configuration by adding three more cantons,[3] and at the same time the ancient political order

[1] St. Gall, the Grisons, and Ticino. The first two of these had previously been *Zugewandte Orte*, or affiliated states.

[2] Aargau, Thurgau, and Vaud.

[3] Neuchâtel, Geneva, and the Valais. These had all been previously affiliated to the Confederation, though not a part of it. Neuchâtel, however, remained to some extent connected with Prussia until 1857.

was partially restored by still further weakening the federal tie. A period of reaction then set in; and, although after 1830 great changes began to take place in the cantonal governments, the form of the Confederation remained unaltered until religious dissensions led to the formation by the Catholic cantons of a separate league known as the *Sonderbund*. This caused a civil war, in which the Catholic forces were quickly overpowered and the Sonderbund broken up. The struggle precipitated a crisis, and brought about the creation of a stronger and more highly organized central government by means of the Constitution of 1848. In 1874 the power of the federal authorities was again increased by another Constitution, which has often been amended in part but has never been superseded, and still remains the basis of the Swiss federal system.

The Confederation is composed of twenty-two cantons, each with its own peculiar laws, customs, history, and habits of thought; or, rather, it would be more accurate to call the number twenty-five, for three of the cantons have, from religious, historical, or other causes, split into half-cantons, each of which is entirely independent of its twin, and differs from a whole canton in only two respects. In the first place a half-canton sends a single member to the Council of States, or federal senate, instead of two; and, in the second place, it is entitled to cast only a half-vote on the question of amending the constitution. The cantons correspond to our states, and in some respects the Swiss federal system is very similar to our own, although in others it is radically different.

The National and Cantonal Powers

The Swiss national government, like that of the United States, has only the powers specially conferred upon it, the Constitution expressly declaring that the cantons are sov-

ereign, so far as their sovereignty is not limited by that instrument, and as such are entitled to all the rights not delegated to the federal authorities.[1] The Swiss Confederation also resembles our own in being a union of states possessing equal rights, but the distribution of power between those states and the central government is based on quite a different plan from that which prevails here. On this point Switzerland is much more closely akin to Germany than to America; for, instead of assigning to the federal and state governments separate spheres of action, the Swiss, like the Germans, have combined legislative centralization with administrative decentralization, the federal laws being carried out as a rule by the cantonal authorities.[2] The direct executive functions of the federal government have been largely confined to foreign affairs, the customs-house, the postal and telegraph services, the alcohol monopoly, polytechnic schools, and arsenals. Recently, federal institutions for social insurance have also been established.[3] In other matters, however, the federal government acts in the way of inspection and supervision.[4] Even the federal court

[1] Const. Art. 3. The cantons have power to make conventions among themselves on matters that are not of a political nature (Art. 7), and even to make treaties with foreign powers on certain minor subjects (Art. 9). The latest example of such a convention between cantons, called a "concordat," was in 1911 when fourteen cantons united in a guaranty of mutual assistance in the execution of all claims falling within the field of public law, especially tax claims. Later, eight other cantons announced their acceptance of this measure. Robert C. Brooks, *Government and Politics of Switzerland*, p. 343. The United States has also made use of the interstate compact as a method of settling difficulties between states, but to a smaller extent than Switzerland.

[2] Cf. Dubs, *Droit Public de la Conféd. Suisse*, part ii. pp. 44–45.

[3] Brooks, p. 60.

[4] Adams and Cunningham, *The Swiss Confederation*, ch. 2; Dupriez, *Les Ministres dans les principaux pays d'Europe et d'Amérique*, ii. 243; Numa Droz, *Etudes et Portraits Politiques*, p. 392.

has to rely for the most part on cantonal machinery to execute its judgments, as it has no officials of its own for the purpose.[1] On the other hand, the power of the national government to supervise the local administration is great, and extends beyond a mere oversight of the execution of the federal laws. Thus the Confederation is expressly directed to compel the cantons to provide free, compulsory, and non-sectarian education, although it has no right to prescribe how that education shall be given.[2] A wide opening for federal interference is furnished in the clause of the constitution whereby the Confederation guarantees to the cantons, among other things, the liberty and rights of the people and the constitutional rights of the citizens.[3] In form, the guaranty runs only in favor of the cantons as such; but in practice it has been held to authorize the protection of an individual against the cantonal authorities, and it has even been construed to empower the federal executive to prevent improper tampering with a local voting list.[4] Another article of the Constitution, of great importance in this connection, is one which provides that if, in case of internal disturbance, the cantonal authorities are unable to call upon the federal government for aid, it may intervene of its own accord.[5] Since 1848, eleven cases of internal disturbances in various cantons have occupied the attention of the central authorities.[6] It will be observed, therefore, that the Confederation has very little direct executive power, but has a wide supervision over the administration, and in case of actual disturbance it appears as an arbiter, with power to enforce its decisions.

[1] See Adams, p. 71; Winchester, *The Swiss Republic*, p. 114.
[2] Const. Art. 27. [3] Art. 5. Cf. Art. 85, §7.
[4] Cf. Adams, pp. 69–71; Winchester, pp. 129–130.
[5] Art. 16. [6] Brooks, p. 55.

The legislative authority of the national government is much more extensive in Switzerland than in this country, for, in addition to the powers conferred upon Congress, it includes such subjects as regulation of religious bodies,[1] prevention of epidemics and epizoötics,[2] the game laws,[3] the construction and operation of all railroads,[4] the regulation of labor in factories,[5] and other subjects. Besides all this, the central legislature may interfere in other matters, such as the cantonal laws regulating the press, which are not directly subject to its control. In fact, as Dupriez remarks, the Confederation has been made a sort of tutor and supervisor of the cantons.[6]

Amendment of the Constitution

The legislative power of the central government is not only greater in Switzerland than in the United States, but is being increased much more rapidly by means of amendments to the Constitution, which are continually placing new subjects within the domain of federal law. This process is hastened by the comparative ease with which the Constitution can be changed; for, although the process of amendment is not a little complicated, it is by no means so difficult to put in practice as in the United States, as is evident from the fact that an amendment of some sort has been adopted, on the average, every other year. Between 1878 and 1923 twenty-nine constitutional amendments were

[1] Const. Arts. 49–57. [2] Art. 69. [3] Art. 25. [4] Art. 26.

[5] And the operation of emigration societies and insurance companies (Art. 34). On some of these subjects the cantons cannot legislate at all; on others, action on their part is not excluded, provided it is not inconsistent with the federal statutes. The powers of the national government are not enumerated systematically in the Constitution, but are scattered through the various articles of the first chapter.

[6] Dupriez, ii. 175.

adopted.[1] In the United States only four amendments were adopted during the same period.

The process can be carried on in a variety of ways.[2] A total revision of the Constitution may be brought about by three different means, but it is unnecessary to describe them here because no such action has been taken since the present Constitution was adopted in 1874. If the legislature wishes to make a partial revision, that is, to adopt a particular constitutional amendment, it adopts a resolution to this effect, accompanied only by the formalities required for enacting an ordinary statute, except that it must be approved by a popular vote which must show a majority both in the total vote cast and in the votes in more than half of the cantons. Until 1891 a partial revision could be proposed only by the two houses of the legislature, but in that year a change was made in the Constitution introducing the initiative for this purpose, so that fifty thousand voters may demand an amendment. This may either be presented in its final shape and be immediately submitted to the voters, or it may be described only in general terms, and in that case, the people must be asked whether they approve of the suggestion. If they vote yes, the amendment is drawn up by the existing legislature and follows the ordinary course. Of the amendments passed by the legislature from 1848 to July, 1923, twenty-four were accepted and seven rejected by the Swiss people, while nineteen amendments have been submitted by initiative, of which five have been accepted and fourteen rejected.[3]

[1] *Tableaux des lois et des arrêtés fédéraux soumis au referendum, et des demandes d'initiative de 1874–1924, et des Votations fédérales depuis 1848* (Edité par la Chancellerie fédérale), pp. 16–20.

[2] Const., ch. 3.

[3] *Tableaux*, pp. 17–20.

The Federal Council

The men who framed the Constitution of 1848 were deeply influenced by the example of the United States, especially in regard to the composition of the national legislature, or Federal Assembly, as it is called. This body consists of two branches, one of which, known as the National Council, corresponds to our House of Representatives, and is elected directly by the people; while the other, called the Council of States, and corresponding to our Senate, contains two members chosen by each canton, and one by each half-canton. In the case of the executive, the American practice was not followed, for the Swiss have a dread of confiding authority to any single person, and always prefer a collegiate body. Instead of a President, therefore, they instituted a Federal Council of seven members. They also established a Federal Tribunal, which resembles, though not very closely, the Supreme Court of the United States.

The members of the Federal Council are all elected at the same time by each new Federal Assembly as soon as it meets. They are chosen for three years, or, speaking strictly, for the term of the National Council, because if that body is dissolved before the three years have expired, the new Assembly elects the Federal Council afresh.[1] The work of administration is divided into seven departments, which are allotted to the members of the Council by arrangement among themselves.[2] The "President of the Swiss Con-

[1] If a vacancy in the Federal Council occurs, it is filled only for the unexpired term. (Const. Art. 96.) For the organization and powers of the Federal Council, see Arts. 95–104.

[2] According to the ordinance of July 8, 1887, which is apparently still in force, these departments are Foreign Affairs, Interior, Justice and Police, Military, Finance, Industry and Agriculture, and the Post-office and Railroads. For the precise division of business between them, see Dupriez, ii,

federation" is one of the seven councillors, and is elected, as is also the Vice President, by the Federal Assembly for a single year. The Constitution expressly provides that the President shall not be elected president or vice-president for the ensuing year; and by the present custom the vice-president is always elected president, so that the office passes by rotation among the members of the Council. The President is in no sense the chief of the administration. He has no more power than the other councillors, and is no more responsible than they are for the course of the government. He is simply the chairman of the executive committee of the nation, and as such he tries to keep himself informed of what his colleagues are doing, and performs the ceremonial duties of titular head of the state.[1]

The labors of the Federal Council are manifold, for besides the work of administration, it attends to a number of matters that are distinctly legislative or judicial. In Switzerland, indeed, the separation of powers, although proclaimed, in many of the cantonal constitutions, is by no means carried out strictly; and the competence of the different branches of the national government is such that Dr. Dubs spoke of the system as an organic confusion of powers.[2] Owing to the distinction between public and private law which prevails in Switzerland, as in other countries of Con-

239–246. The allotment is nominally made afresh every year, and at one time there was a complaint that actual changes were too frequent (Dubs, pt. ii, pp. 101–102); but this is no longer the case (Dupriez, ii. 183–184), and in fact there are now complaints that changes are not made often enough (Droz, *Etudes*, p. 402).

[1] The collegiate executive, as found in Switzerland, has been adopted in the new constitutions of Esthonia and of a number of the new German states. McBain and Rogers, *New Constitutions of Europe*, p. 28.

[2] Part ii, p. 104. It may be observed, however, that the Federal Council has no general power to issue ordinances to complete or carry out the laws. Dupriez, ii. 235–236.

tinental Europe, the Federal Council at one time had extensive judicial functions; for in spite of the fact that the Federal Tribunal was created chiefly for the purpose of deciding controversies about public law, a large class of administrative questions was formerly excepted from its jurisdiction, and since there were then no administrative courts, these questions were dealt with directly by the Federal Council, subject to appeal to the Federal Assembly. On October 25, 1914, however, a constitutional amendment transferred these duties to a federal administrative court.

Its Relation to the Federal Assembly

The relation of the executive to the legislature in Switzerland differs from that in every other nation. The Federal Council is not, like the President of the United States, a separate branch of the government which has a power of final decision within its own sphere of action. It has been given no veto upon laws to prevent encroachments upon its rights, and even in executive matters it has, strictly speaking, no independent authority at all; for it seems that its acts can be controlled or reversed by the Federal Assembly.[1] Every year the Council presents an elaborate report to that Assembly,[2] and the chambers take advantage of the discussion that follows to recommend any changes in the method of administration.[3] In some ways the position

[1] Dubs, xii. pp. 103–104; Droz, *Instruction Civique*, p. 191.

[2] Const. Art. 102, §16.

[3] Dupriez, ii. 228, 230–231; Viscount Bryce declared in his last great work, "Were it their function to initiate and advocate policy, this continuity would be scarcely possible. Policy, however, belongs to the Assembly; though in practice the Council by its knowledge and experience exerts much influence even on questions of general principle, while details are usually left to it." *Modern Democracies*, i. 353.

of the Council resembles that of the cabinet in a parliamentary government, for although the councillors are not suffered to be members of the Assembly, they appear in both chambers,[1] take an active part in the debates, and exert a great influence on legislation. Not only do they lay before the Assembly such measures as they think proper, but it is very common for the chambers, by means of a resolution called a "postulat," to request the Council to prepare a bill on some subject; and, in fact, all measures not introduced by the Council are, as a rule, referred to it before they are sent to a committee or taken up for debate.[2]

But while the connection between the executive and legislature is quite as close as it would be under a parliamentary system, the relations between the two are based upon an entirely different principle, because the federal councillors do not resign when their measures are rejected. On the contrary, if the Assembly disagrees with them in legislative or executive matters, they submit to its will as the final authority, and try loyally to carry out its directions. To the Swiss, indeed, it seems as irrational for the state to lose a valuable administrator on account of a difference of opinion about a law, as it is inconceivable to an Englishman that a minister can retain his place with self-respect after his measures have been condemned by Parliament.[3]

[1] Cf. Const. Art. 101. "Still the relations between the Federal Council and the two houses come nearer to the English model than they do to the totally independent position of the American President, and Congress." Freeman, quoted by Moses, *Federal Government of Switzerland*, p. 138.

[2] Dupriez, ii. 219–220.

[3] Cf. Droz, *Inst. Civ.*, p. 90. The rules of both chambers provide for interpellations (C. of States, Art. 60; Nat. C. Art. 68), but these are really simple questions, and in 1879 the Council of States decided that although an interpellant might declare whether he was satisfied with the answer to his question or not no debate should follow. (*Règlement du Conseil des Etats*, ed. 1881, note to Art. 60.)

In selecting members of the Federal Council, more attention is paid to executive capacity than to political leadership. Its members are not the party leaders, nor are they collectively pledged to any programme. In fact, they hold very divergent political views, and do not all belong to the same political party. It is surprising that a body so composed can work smoothly, and the explanation must be sought partly in the habit of compromise and submission to the majority; partly in the fact that the final decision of all the most important questions rests with the Assembly; and partly in the absence of any necessity for unanimity, such as exists in a parliamentary system; for the councillors do not purport to hold the same opinions. One of the most important functions of the Council is that of acting as a mediatory between the different opinions, the different interests, and the different political bodies in the Confederation and the cantons, and this it could not do if it represented a single party. Its influence depends to a great extent on confidence in its impartiality, and hence its position is fortified by anything that tends to strengthen and perpetuate its non-partisan character.[1]

In fact, it is just this non-partisan character that makes it possible for the Council to be virtually a permanent body. While it is chosen afresh every three years, the old members are always reëlected if they want to serve; and since the adoption of the present constitution in 1874 there seems to have been no exception to this rule. Some members of the Council have held office as long as thirty-two, twenty-seven and twenty-five years.[2]

[1] Under the control of the Council there is a Federal Chancellor, whose office is in Berne. He acts as secretary of the Council and the legislature. His signature is required for certain laws, to attest their authenticity, but he has no discretion in the matter. Const. Art. 105. Brooks, p. 123; Dubs, part ii, pp. 95, 104–105.

[2] Brooks, p. 106.

In the past the Councillors have been decidedly overworked. Visitors before the World War were "surprised to find how small was the official staff attached to the several departments, and how limited the accommodation provided for the Councillors and their secretaries. Even the plainness of the arrangements that existed at Washington fifty years ago did not reach this austere republican simplicity." [1] Some relief from its burdens was given the Council by the establishment of an administrative court in 1914, and by the adoption of another constitutional amendment in the same year providing that federal legislation might transfer definite matters of business from the Council to subordinate authorities, with a right of appeal.[2] Acting upon this authority, the Council has delegated many of its tasks to under-officials.

The Federal Council has been considered at some length because, although its legal authority is not extensive, it may almost be regarded as the mainspring, and is certainly the balance-wheel, of the national government. It has been called, by a leading Swiss statesman, the Executive Committee of the Federal Assembly, and in fact its position gives it some of the chief privileges of the English cabinet without the disadvantages. There is the same mutual confidence and intimate coöperation between the executive

[1] Bryce, p. 354.

[2] Brooks, p. 128. Following the outbreak of war in 1914, the Federal Assembly passed an act conferring unlimited power (*unbeschränkte Vollmacht*) upon the Federal Council to take all measures necessary for the security, integrity, and neutrality of Switzerland, and to protect the credit and economic interests of the country, especially its food supply. This law revolutionized the relation of the executive to the legislature during the war; but with its repeal, it does not appear that any permanent change in the relationship of the Council to the Assembly has been made. Cf. Brooks, "The Little Republic of the Alps," *These Eventful Years*, ii. 160. To guard against abuse of its powers by the executive, each House created a Neutrality Commission.

and the legislature, but there is also a possibility of including men of different opinions in the executive board of the nation; for this, which adds to the strength of the Federal Council, would be a source of weakness in a parliamentary cabinet. A coalition ministry is always weak, because it is composed of men who, under the pretence of harmony, are continually trying to get the better of each other, and would not hold together if any group of them alone could control a majority in Parliament. But as the Federal Council is not the organ of a majority in the Assembly, the representation of divergent views is frankly acknowledged. Instead of involving a state of smothered hostility, this arises from a real wish to give to openly different opinions a share of influence in the conduct of public affairs. Hence it strengthens the Council by broadening its basis, disarming the enmity of the only elements that could form a serious opposition, and enabling it to represent the whole community.[1] Another advantage of the Swiss form of government consists in a stability, a freedom from sudden changes of policy, and a permanence of tenure on the part of capable administrators, which can never be attained under the parliamentary system. The habit of selecting new members singly and at considerable intervals secures, moreover, a continuity of traditions which is invaluable, while at the same time it lifts the body above the transient impulses that stir the people. Custom, which is stronger than law, has developed a system whereby the executive virtually enjoys a high degree of political independence, while the danger of abuse is obviated by the fact that the Assembly inspects the

[1] After pointing out that the Swiss System rests upon convention rather than law, Viscount Bryce raises the question whether or not it could endure were the smaller parties in the Assembly to become bitterly antagonistic to the Radicals, — the largest party. *Modern Democracies*, i. 449.

work of the Council, controls its general course of policy, and has power to reverse its acts.

The Council of States

We now come to the Council of States, which contains two members from each canton and one from each half-canton, — a total of forty-four.[1] This body corresponds to the Senate of the United States, and was apparently expected by the framers of the Constitution of 1848 to occupy a similar position; but this it has failed to do for several reasons.[2] Unlike the Senate, it is given no special functions, the powers of the two houses being exactly alike. The members, moreover, do not enjoy a fixed salary, a uniform method of election, or a long tenure of office; for the Constitution, instead of regulating these matters, followed the tradition inherited from the ancient Diet, and left each canton to settle them as it saw fit. The result has been that the members are chosen in some cases by the legislatures, in others by direct popular vote — the former method being still employed by four cantons.[3] The periods for which these representatives are elected also vary all the way from one year to four.

Although the Council of States began its career with a high reputation, the leading statesmen came to prefer seats in the more popular chamber. Now, of two bodies with equal powers, the one in which the political leaders are found is almost certain in the long run to carry the greater weight, and therefore it is not surprising that the Council of States wields less authority and influence than the National

[1] Cf. Const. Arts. 80–83.

[2] Orelli, *Schweiz. Eidgenossenschaft*, p. 31, says that it is not clear what position the Council of States was intended to assume. In fact, it is something between the American Senate and a French upper chamber.

[3] Berne, Fribourg, Saint-Gall, and Neuchâtel.

Council. Yet the fact that it has usually viewed legislative questions more liberally than the popular chamber has justified its existence.[1]

The National Council

The organization of the lower chamber — the National Council — is regulated entirely by the federal Constitution.[2] The members are elected for three years by direct universal suffrage, every male citizen twenty years of age being a voter, unless he has been deprived of his political rights in accordance with the laws of the canton where he resides. A voter is not eligible, however, unless he is a layman — a restriction aimed exclusively at the Catholic clergy, because a Swiss Protestant pastor can resign his ministry while he sits in the legislature, while by the rules of the Catholic church a priest cannot divest himself of his sacerdotal character.[3] By an initiative amendment adopted in 1918, members of the National Council are now selected by proportional representation, each canton being an electoral district, and the "electoral quotient" system, somewhat similar to that used in France, being followed.[4]

The Constitution provides that one member shall be

[1] Brooks, p. 91.

[2] Const. Arts. 72–79.

[3] Adams, p. 44; Dubs, part ii, pp. 73–74.

[4] Amendment of Article 73, adopted October 13, 1918. Art. 17 of the law of February 14, 1919, carrying the amendment into effect says: "Le nombre total des suffrages valables (suffrages de parti) est divisé par le nombre plus un des députés à élire, et le nombre entier immédiatement supérieur au quotient ainsi obtenu constitue le quotient provisoire.

"Chaque liste a droit à autant de députes que son chiffre total de suffrages de parti contient de fois ce quotient.

"Si, après cette répartition, les mandats ne sont pas tous attribués, le total des suffrages de chaque liste est divisé par le nombre plus un des députés qui lui ont été attribués et le siège encore vacant est dévolu à la liste qui accuse le quotient le plus élevé."

allotted to each canton or half-canton, for every twenty thousand people, and any fraction left over which exceeds ten thousand. The result is that the National Council has increased with the growth of the population until there are now about two hundred members. The charge was formerly made that the electoral districts were drawn with a view to preventing the Clerical Party from getting a fair share of representatives — a charge that led to an insurrection in Ticino in 1890, which might have had serious results, had not the federal authorities intervened.[1]

The Assembly holds two sessions a year, the first beginning on the first Monday in November and the second on the first Monday in June. Its debates, as well as those of the Council of State, are conducted in German, French, and Italian, there being no single official language. While the Federal Council may call extraordinary sessions of the two houses, it cannot dissolve either branch of the legislature or terminate the sessions.

Before leaving the subject of the Federal Assembly, it is necessary to add that for all their ordinary work the two chambers sit separately, but that they meet in joint session for three purposes: the decision of conflicts of jurisdiction between the federal authorities; the granting of pardons; and the election of the Federal Council, the Federal Tribunal, the Chancellor of the Confederation, and the Commander-in-Chief of the federal army.[2]

The Federal Tribunal

Until the constitutional amendment of October 25, 1914, for the creation of an administrative court, the Federal Tribunal was the only national court. As a compensation

[1] Cf. Dubs, part 1, p. 71; Droz, *Etudes*, pp. 74–75; Deploige, *Le Référendum*, p. 83; Bourgeaud, *Etablissement et Révision des Constitutions*, pp. 397–398.

[2] Const. Art. 92.

to French Switzerland for the fact that Berne was made the seat of the government, and that the national polytechnic school was located at Zurich, this Tribunal was established at Lausanne, in the canton of Vaud. By the terms of the Constitution its jurisdiction covers all suits between the Confederation and the cantons, or between the cantons themselves; suits brought by an individual against the Confederation; and suits between a canton and an individual, if either party demands it.[1] The jurisdiction has moreover been enlarged by means of a clause which empowers the Federal Assembly — that is, the two houses of the national legislature — to place other matters within its competence. Aided by the adoption of a uniform civil code which went into effect in January, 1912, the Federal Assembly has used this power so freely that the Court has now a large appellate jurisdiction in civil suits.[2] It is, however, bound by an express provision of the Constitution to apply every law passed by the Federal Assembly,[3] and thus it cannot declare acts of the federal government unconstitutional. It has, therefore, none of the peculiar authority vested in the Supreme Court of the United States. Moreover, it has less jurisdiction over the public officials than the Supreme Court, since Switzerland follows the tradition usual in continental Europe of separating administrative law from other kinds of jurisprudence. After leaving the former for many years in the hands of executive and legislative bodies, it created, as already remarked, in 1914, a special administrative court.[4]

[1] In the last two classes of cases, the amount must be 3,000 francs. This amount is fixed by statute. By the Constitution the court also has jurisdiction of cases of citizenship and of suits in which both parties voluntarily submit to its decisions. Const. Arts. 106–114.

[2] It is interesting to note that in Switzerland the maximum and minimum fees of lawyers are fixed by law. Brooks, p. 174.

[3] Art. 113.

[4] Const. Art. 114 *bis*, adopted October 25, 1914.

The Cantons

Cantonal feeling is slowly diminishing with the growth in the authority of the national government; but it is still so strong, and the powers of the cantons are still so extensive, that Swiss politics are only half understood without a knowledge of local institutions. Subject to federal approval, the cantons are free to construct their constitutions as they please. Despite the wide dissimilarities between them, all but six have a single-chamber legislative body called the Grand, or Cantonal, Council. These bodies are elected by popular vote — ten cantons using the system of proportional representation — for a term of three or four years. In each canton, the executive power is vested in a commission, resembling somewhat the Federal Council.[1]

The Landsgemeinde

By far the most picturesque of the traditional forms of government in the Swiss cantons is the Landsgemeinde, or mass meeting of all the citizens, which is still found in two whole cantons and in four half-cantons. The origin of this institution has been disputed, but in some cantons it has had an uninterrupted existence since 1309.[2] A number of charming and graphic accounts of it have been published.[3] These usually describe the meeting in the canton of Uri, at the head of the Lake of Lucerne, partly because it is the most easily accessible, and partly because the open meadow near Altdorf where it is held, with the great mountains

[1] For proportional representation, cf. Brooks, ch. 16; also p. 321.

[2] Brooks, p. 367.

[3] See, for example, Adams, pp. 130–132; Winchester, pp. 151–157; MacCrackan, *Teutonic Switzerland*, ch. 11. One of the best accounts of the Landsgemeinde and their history is that of Rambert: *Les Alpes Suisses. Etudes Historiques et Nationales.*

towering above, make the scene singularly impressive. On a Sunday morning in May the Landamman, accompanied by attendants dressed in the black and yellow livery of Uri, and bearing the huge horns of the wild bull, starts for the meadow, followed by all the people. When the procession reaches the spot, he takes his seat at a table in the centre of the field, while the men fill the space around him, and the women and children stand upon the rising ground beyond. The Landamman first recounts the events of the past year, and then offers a prayer; after which the business of the day begins. The measures to be proposed are brought forward, freely debated, and voted upon by the citizens, and finally the officers are elected for the ensuing year. The form of the procedure is similar to that of the New England town-meeting, and must have the same value as a means of political education. In making this comparison, however, it must be remembered that the competence of the Assembly is far more extensive than in our towns; for it not only votes the taxes, and usually the loans and the more important expenditures, but it passes all the laws, and exercises the other powers that commonly belong to the legislature; and, what is more, it has absolute power to change the constitution of the canton.[1]

In order to enable a large public meeting to get through its work, and to prevent surprise and hasty, ill-considered action, it is necessary to prepare the business carefully beforehand, and in the case of the Landsgemeinde this is done by a council. At one time the councils tried to draw the whole control of affairs into their own hands, so that no question could be brought before the Landsgemeinde with-

[1] In Glarus, when the assembled people decide to make a total revision of the constitution, the council prepares the new draft and submits it to the next regular Landsgemeinde; so that a revision of that kind cannot be carried through at one meeting. (Const. Glarus, Art. 88.)

out their approval;[1] but after a struggle, the right of private initiative prevailed, and it is now the rule everywhere that one or more citizens can in some form propose any measure, provided notice is given to the cantonal authorities beforehand. It may also be worth while to observe that most of the cantons where this institution still exists are conservative in temperament, and their Landsgemeinde enacts very few laws.[2]

Because of the cantonal organization, the spirit of which also pervades the district and commune, it may be observed that democracy in Switzerland is not merely a national matter, but has its roots far down in the local bodies; and this gives it a stability and conservatism which it lacks in most other continental nations. As Viscount Bryce pointed out, "Local self-government has been in Switzerland a factor of prime importance, not only as the basis of the administrative fabric, but also because the training which the people have received from practice in it has been a chief cause of their success in working republican institutions. Nowhere in Europe has it been so fully left in the hands of the people.[3]

The Referendum

Of all the remarkable institutions that democracy has produced in Switzerland, the one that has attracted the greatest attention, and is the most deserving of study, is the

[1] Keller, *Volksinitiativrecht*, tit. i. ch. 2; Rambert, pp. 199–205, 282–283; Deploige, pp. 8–9.

[2] Winchester, p. 160. This, however, is hardly true of Glarus and Appenzell-Ausserrhoden. Cf. Rambert, pp. 283–284, 304–305. Professor Brooks states: "It is emphatically not the case, however, that the quality of pure democratic legislation is reactionary." *Government of Switzerland*, p. 383. Bryce comments on the conservatism of these cantons; *Modern Democracies*, i. 337.

[3] *Modern Democracies*, i. 335.

popular voting upon laws, known as the initiative and referendum. While the modern instrument is an outgrowth of an ancient practice under the old Swiss Confederation of referring important decisions to the home governments, it is quite different in form, and is based upon abstract theories of popular rights, derived mainly from the teachings of Rousseau. This writer had a strong aversion to representative government, and remarked in his celebrated "Contrat Social" that the English, with all their boasted liberty, were not really free, because they enjoyed their liberty only at the moment of choosing a parliament, and were absolutely under its rule until the next election. He declared that, in order to attain true liberty, the laws ought to be enacted directly by the people themselves, although he saw no method by which that could be done in a state too large to permit of a mass meeting of all the citizens. Rousseau's ideas of popular rights sank deep into the minds of his countrymen; and when the Swiss, who as a rule is extremely practical in politics, becomes fairly enamored of an abstract theory, he clings to it with a tenacity worthy of a martyr.

In speaking of the modern referendum, however, as a Swiss invention, a distinction between constitutional questions and ordinary laws must be borne in mind. The principle that a sanction by popular vote is necessary for the adoption of a constitution cannot be said to have had its origin in Switzerland, for it had been recognized and acted upon in other places for half a century.[1]

The credit for the referendum on ordinary laws belongs, on the other hand, entirely to the Swiss. While abstract theory was largely responsible for its introduction, it ap-

[1] For example, as early as 1778 the General Court of Massachusetts submitted a constitution to the people, which they rejected. Thereafter the practice of referring constitutional amendments to the people in the states soon became universal.

pears that the basis of the popular desire to take a direct part in legislation is to be found also in the defective condition of the representative system under the old Confederation.[1] Nor is this surprising. Up to the end of the eighteenth century, the Swiss had no experience of representative government, and therefore, when representative institutions were copied from other countries after the French Revolution, the people were not accustomed to them and met with two difficulties. In the first place, they did not know how to provide the necessary checks and balances, but set up single chambers with absolute powers; and in the second place, they had not learned to make those chambers reflect public opinion. Irritation at the acts of such legislatures led to the demand for direct popular legislation. First introduced into the canton of St. Gall in 1831, the referendum on ordinary legislation was soon adopted by the other cantons, with the exception of Freiburg; and in 1874 it was embodied in the federal constitution.

The referendum in Switzerland is of two kinds, one of which is called optional, and this is where the law must be submitted to popular vote if a certain number of citizens petition for it; the other is the obligatory, and requires, as the name implies, that all laws shall be submitted without the need of any petition. The obligatory form is obviously the most purely democratic, for it requires a direct popular action on every law; but the Swiss statesmen themselves consider it preferable on practical grounds also, because it avoids the agitation necessarily involved in the effort to collect signature to the petition.[2] Both of these forms have

[1] Ganzoni, *Beiträge zur Kenntniss des bünderischen Referendums*, p. 6, remarks that the Grisons, which had a form of direct popular legislation, was the only canton without a Landsgemeinde in which disturbances did not take place.

[2] Cf. Dubs, part ix, p. 214; part ii, p. 155; Adams, p. 89.

been in general use, and it is curious that the first to be adopted was the obligatory.

Except for constitutional amendments, the Constitution of the Confederation provides only for the optional referendum, which may be applied to all laws and resolutions of a general nature, not urgent in character, if thirty thousand signatures to a petition are obtained within ninety days after the law has been passed, or if eight cantons request it. Out of three hundred and ninety-six ordinary laws passed by the Swiss legislature between 1874 and 1924, thirty-six were submitted to a referendum and twenty-three of them rejected.[1] In other words, under the referendum the people have rejected less than six per cent of the legislation passed. The referendum does not, however, apply to the annual budget, or to concrete questions such as a decision upon a conflict of authority, or the approval of a cantonal constitution by the national government. Neither does it apply to measures which the Assembly declares urgent — a power which that body is said to have used arbitrarily at times.

Until recently, treaties also were exempt from the referendum. But in January, 1921, the people adopted a constitutional amendment providing that "Treaties with foreign powers which are concluded without limit of time or for more than fifteen years shall also be submitted to the people for acceptance or rejection upon demand of 30,000 Swiss citizens qualified to vote, or of eight cantons." [2] The desire for this extension of the referendum was caused by the revelation in 1909 of a secret protest made by Germany eleven years previously against the nationalization of the Swiss railways.[3] The first treaty to be submitted to a referendum —

[1] *Tableaux*, pp. 2–11, 21–23. Cf. Appendix A of the author's *Public Opinion and Popular Government*.

[2] Amendment to Art. 89, adopted January 30, 1921, by the Initiative.

[3] Brooks, p. 273.

the agreement between France and Switzerland abolishing the "free zones" of Savoy — was rejected by the people in February, 1923, by a vote of more than four to one, causing diplomatic complications with France which were finally settled by arbitration.

In the cantons the obligatory form of referendum has been gradually prevailing over the optional. It is now in use in eleven cantons, while seven make use of the optional,[1] six have Landsgemeindes, and only one, Freiburg, has no form of popular voting upon laws. The obligatory form would, of course, be out of the question were it not that the number of statutes enacted is very small. Popular votes on more than half a dozen laws in a canton a year are uncommon, and often they are much less.

The Initiative

While the referendum merely enables the people to reject measures passed by their representatives, the initiative gives them the right to enact laws directly. It is a device by which a certain number of citizens can propose a law and require a popular vote upon it, in spite of the refusal of the legislature to adopt their views. First adopted in Vaud in 1845, the system is now applied in all the cantons so far as proposing constitutional amendments is concerned.[2] Moreover, in all the cantons except three (Luzerne, Freiburg, and Valais), the initiative applies to ordinary laws. In the Confederation the initiative has been confined to constitutional amendments, and in that case, as we have already seen, the voters may either draft an amendment in final form or submit a proposal in general terms. For either of these

[1] Brooks, p. 315.

[2] Geneva retains the old practice of submitting the question of revising her constitution to popular vote every fifteen years.

purposes, the signatures of 50,000 voters are required. From the time of its creation in 1874 to 1924 the federal initiative had been used nineteen times and in only five of these with success.[1] In the cantons, the results have also been meagre, but in considering the small number of laws enacted by this process, the diminutive total legislative output in Switzerland must be borne in mind.[2]

As in the case of some other political innovations, legislation by popular vote in Switzerland has justified neither excessive hopes nor fears. On the whole, the people have shown a tendency to reject measures that are radical, one of the most recent examples being the overwhelming rejection of an initiative proposal to amend the Constitution so as to impose a special tax on property in excess of 80,000 francs.[3] Taking the Confederation and the cantons together, the proportion of citizens who vote on the laws submitted is small. Running in isolated cases from a little under eighty down to a little over twenty per cent, the average is not very far from half of the registered voters. According to Viscount Bryce, direct legislation in Switzerland has revealed the qualities of independence on the part of the voter; of parsimony — an aversion to measures increasing taxation; of dislike of officialism, and hence the opposition to measures strengthening State Socialism; and of jealousy of encroachment on the rights of the cantons. Consequently, it happens that the voter is frequently more short-sighted than his representatives. "Wider views of policy would have sanctioned compulsory vaccination, reforms in the military administration, proposals for the better support of foreign

[1] *Tableaux*, cited, p. 19.

[2] For a statement of the laws so enacted see the author's *Public Opinion and Popular Government*, pars. 87–88, and Appendix.

[3] Cf. Brooks, "Swiss Initiative of December 3, 1822," in *American Political Science Review*, August, 1923, p. 445.

legations and for pensions to Federal officials." [1] However, as it is the people who suffer for their own mistakes, and as the initiative and referendum have a great educational value, the opposition to these measures in Switzerland has long ago ceased to exist.[2]

Political Parties

The history of political parties in Switzerland has been marked by a gradual transfer of power from the Right to the Left. The change, however, has been largely in name, for since the Radical Party came into power, it has differed little in policies from its predecessors. The Constitution of 1848, which welded the cantons into a federation, was the work of the Liberals, who believed in centralization and were anti-clerical. A number of issues soon arose, however, over the treatment to be accorded to political refugees, military capitulations, and the railroads, which divided the Liberal Party into a moderate and a more advanced wing. This latter branch, who called themselves Radicals, advocated a programme of social reform and such innovations as the initiative and referendum. They soon wrested the control of affairs from the Liberals; and after bringing about the constitutional revision of 1874, long remained in control of the Federal Assembly. Up to 1918 this party held a majority in both houses of the legislature; but in the following year the elections gave to no party an absolute majority, although the Radicals remain the largest single group.[3]

The two other main parties are the Catholic Conservatives, whose chief strength lies in the cantons of Uri, Unterwalden, and Appenzell Interior, and the Social Demo-

[1] *Modern Democracies*, i. 389 ff. [2] Brooks, p. 164; Bryce, i. 400.
[3] Bryce, i. 421.

cratic Party, "the political organization of wage-workers, employees and the economically weak generally, with which the socially minded of all classes have united themselves." The strength of this party lies in the great industrial centres; and the fact that the seats it holds in the National Council increased from 9 in 1902 to 43 in 1922 shows that it is a force which must be counted with in the future.[1]

There has been a marked absence of sudden party fluctuations in Switzerland. We do not, as in other democracies, see one side after the other sweep the country and get control of the government. Although parties have never ceased to exist there, the government of the Confederation is not in any true sense a government by party. On account of the nature of the executive, a thoroughly partisan administration is out of the question, and the same absence of strict party control is true of the legislature also, though not quite to the same extent. While in the past there has been an absence of party machinery, each party now is administered by a central committee, responsible to annual party conventions.[2] After reviewing the annual reports of the party officials, these conventions discuss the policies followed by their members in the Federal Assembly and the policies to be followed in the future. Moreover, party caucuses are held of the members of the two houses in the Assembly, to nominate members for the Federal Council and other important offices. As yet, however, the professional politician, or "boss," is virtually unknown to Swiss political life.[3]

[1] Brooks, p. 295. [2] *Ibid.*, p. 307. [3] Bryce, i. 444.

Nature of Swiss Democracy

It is the habit to speak of Athens and Switzerland as the most complete examples of democracy in the ancient and modern world. The comparison is instructive and worth dwelling upon, because it brings into strong relief the characteristic features of the two systems. When the Greek spoke of democracy, he had in mind the conduct of the administration. He meant the control by the mass of citizens of the questions of peace and war, of the relations with the allies and the colonies, of the finances, the army, and the fleet. In Athens at the time of Demosthenes all these things had been placed in the hands of the assembly of the people, which managed them so far as possible directly, or by means of committees chosen for short periods by lot. But the same methods were not applied to legislation. To the Greek mind the laws were normally permanent and unchangeable. Their alteration was an exceptional event, and in Athens they were usually made by the ancient and undemocratic Court of Areopagus, no attempt having been made to organize a system of popular legislation. In Athens, therefore, the administration was conducted directly by the people, but legislation was far less under their control. Now, in Switzerland precisely the reverse is true. It is hard to conceive how the control of legislation by the people could be rendered more absolute than it is made by the referendum and the initiative; but, on the other hand, the executive of the Confederation is removed as far from popular influence as is possible in a community where every public authority is ultimately based on universal suffrage.[1] The

[1] Formerly this was also the case in the cantons, but with the extension of the election of the executive council by the people, it is steadily becoming less true.

federal councillors virtually hold office for life, and they are chosen, not by the people, but by the Assembly, whose members enjoy in their turn a singularly stable tenure. It is commonly said that every form of government, in order to endure, must contain some element of a nature opposed to the general principle on which it is itself based, and capable of preventing that principle from being carried to excess. Thus in a monarchy there must be something to limit the authority of the king, and in a democracy something to restrain popular impulse and fickleness. In Switzerland this element is to be found chiefly in the Federal Council, while the extreme application of the democratic principle is seen in the referendum and the initiative.

The Swiss Confederation is, on the whole, the most successful democracy in the world. Unlike almost every other state in Europe, it has no irreconcilables — the only persons in its territory who could, in any sense, be classed under that name being a mere handful of anarchists, and these, as in our own land, are foreigners. The people are contented. The government has been patriotic, far-sighted, efficient, and economical, steady in its policy, not changing its course with party fluctuations. Corruption in public life is almost unknown, and appointments to office are not made for political purposes by the federal authorities, or by those of most of the cantons. Officials are selected on their merits, and retained as long as they can do their work; and yet the evils of a bureaucracy scarcely exist. All this bears witness to the capacity of the Swiss for self-government, and to the integrity and statesmanship of their rulers. But it must be remembered that Switzerland is free from many of the difficulties that perplex other nations. The country is small, and experience proves that the larger the population, the harder is the problem of free government. The Swiss,

moreover, furnish in their social condition the very best material for a democracy. Wealth is comparatively evenly distributed. There are no great manufacturing centres with their army of operatives; no huge cities with their seething proletariat, and their burden of ignorance, poverty, and vice. There is no long line of immigrants, unused to the laws and customs of the land, to be trained and assimilated. There are no vast territories to be subdued, no mines or other great natural resources to be developed, and hence no immense mass of eager, restless capital, always taking some new shape and presenting some new question. The people also are decidedly stationary, not perpetually moving about from one part of the country to another, and rising and falling in the social scale. Bagehot once said that the men of Massachusetts could work any constitution, and this may be repeated of the Swiss. The reason in each case is the same, for Switzerland is to-day in much the position that New England was in formerly. The social conditions are tolerably equal, the minimum level of education high, and political experience abundant. The Swiss statesmen deserve the highest praise for their labors, and the greatest admiration for their success, but we must beware of thinking that their methods would produce the same effects under different conditions. The problem they have had to solve is that of self-government among a small, stable, and frugal people, and this is far simpler than self-government in a great, rich, and ambitious nation.